

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ZITO MEDIA, L.P.,

Complainant,

v.

**PENNSYLVANIA ELECTRIC
COMPANY,**

Respondent.

**Proceeding No. 17-316
File No. EB-17-MD-006**

To: ENFORCEMENT BUREAU

**RESPONSE OF PENNSYLVANIA ELECTRIC COMPANY
TO POLE ATTACHMENT COMPLAINT
FILED BY ZITO MEDIA, L.P.**

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SUMMARY

Penelec and Zito have not yet engaged in executive-level discussions, so that Zito's Complaint is premature. Penelec respectfully requests that the Commission dismiss Zito's Complaint, with leave to re-file its complaint after Zito agrees to Penelec's offer to schedule executive-level discussions.

Penelec has worked hard to accommodate Zito attachment requests in an environment where poles are becoming more crowded and attachment requests more numerous. Like other utilities, to comply in an effective manner with FCC make-ready deadlines, Penelec has developed a safe and efficient process for accommodating new attachment requests, by hiring an outside contractor Sigma Technologies ("Sigma"). Penelec also took the extraordinary measure of allowing Zito to attach temporarily while its requests for permanent attachments were being processed. Penelec's make-ready process using Sigma, like the process of other utilities, has increased the consistency, accuracy and speed of data collection, resulting in a more efficient and reliable make-ready design process.

The pole attachment agreement between Penelec and Zito envisions that Zito will perform due diligence when selecting its pole route, recommend make-ready for any pole to which Zito seeks to attach, and communicate any other information Zito believes is appropriate. By performing this due diligence, Zito can avoid unnecessary time and expense and identify in advance the most efficient and inexpensive pole route. But rather than performing its own due diligence, Zito appears to be relying exclusively on Penelec to determine whether the routes to which Zito proposes to attach are financially viable.

As a result, Zito's claims about what it cannot do because it has been excluded from the pre-attachment application process are meaningless. If Zito were taking the time to evaluate in

advance its proposed routes or to participate in joint ride outs, Zito could determine “which make-ready work is reasonable under the circumstances,” “whether it should proceed with the work or re-route its facilities,” or “whether there might be solutions that are more efficient and/or cost-effective while still ensuring the safety and integrity of the pole and all of its attachments.” If Zito were taking the time to evaluate in advance its proposed routes or to participate in joint ride outs, Zito could “ensure that poles were not unnecessarily replaced when less costly and more efficient alternative means of accommodating an attachment consistent with governing safety requirements.” If Zito were taking the time to evaluate in advance its proposed routes or to participate in joint ride outs, Zito could identify pre-existing safety violations.

Zito’s failure to perform its due diligence to evaluate in advance its proposed routes or to participate in joint ride outs is one of many objectionable features of Zito’s Complaint. Zito’s Complaint is otherwise unsubstantiated and incorrect in several other important respects. Zito makes unsubstantiated claims “upon information and belief” that Zito is being improperly charged to correct pre-existing violations on Penelec’s poles. Zito fails to substantiate its claim that Penelec’s pre-attachment inspection fees are excessive. Zito’s claim that Penelec’s make-ready construction charges are excessive is similarly unsubstantiated. Zito therefore fails to establish prima facie claims regarding these issues, as required by the rules.

Zito’s failure to perform competent due diligence can have dangerous results, as exemplified by recent Pennsylvania state court litigation, which not only demonstrates Zito’s failure to properly complete a Pole Profile Sheet, but also that Zito will install its facilities in reckless disregard of its own workers’ safety.

As explained below, Penelec’s pre-attachment inspection process is consistent with the practices of at least seven other utilities, as shown by their attached Declarations and by the

similar process identified in PPL's Response a few weeks ago to a similar Zito complaint.

Penelec's process, like the process of these other utilities, is necessary to safely and effectively administer attachment requests, consistent with FCC make-ready deadlines. Like these other utilities, pole loading studies are performed on poles as a prudent engineering analysis, based on accurate measurements and calculations, to assess the impact of new attachment requests.

None of the information gathered in Penelec's pre-attachment inspection process is used by Penelec for anything other than processing Zito's attachment request. Only the name of the new attacher (Zito) is added to any permanent Penelec database, and none of this information is used for Penelec's PaPUC-mandated pole inspection program. Other attachers benefit only by being able to attach to safe and reliable infrastructure.

Zito already appears to understand the pre-attachment inspection and engineering work that is performed on each pole, and to understand the make-ready construction work to be performed on each pole, as evidenced by Zito's dropping poles from its applications on a regular basis. To further assist Zito, Penelec recently agreed voluntarily to develop documentation in its engineering estimates to identify "company betterment" to avoid further confusion, and Penelec to respond soon to Zito's request that Penelec follow the "sufficiently detailed make-ready invoice" example of Penelec's sister company Ohio Edison. But just two and one-half weeks after Penelec agreed to provide this "sufficiently detailed make-ready invoice" detailed engineering package, Zito filed its Complaint without waiting for the package.

It is also significant that this invoice that Zito claims is a "sufficiently detailed make-ready invoice," includes details about the work to be performed on each pole to which Zito seeks to attach, but does not include any "per pole charges" that Zito's Complaint requested.

Without citing anything specific, Zito seems to be recommending that Penelec engage in certain “less costly construction alternatives” which constitute poor construction practices. Penelec has allowed temporary attachments but is under no obligation to continue allowing them if Zito cannot be trusted. And Zito should not be making decisions about engineering contractors, as Zito does not understand electric space design and its corporate objectives are different from Penelec’s.

Finally, Penelec cannot verify without further information the extent to which, if at all, Zito has any federal pole attachment rights to seek FCC resolution of this matter.

TABLE OF CONTENTS

SUMMARY.....	i
I. INTRODUCTION.....	1
II. ARGUMENT	2
A. The Parties Have Not Yet Engaged in Executive-Level Discussions	2
B. Due Diligence and Compliance with The Pole Attachment Agreement by Zito Would Resolve Most Issues in Its Complaint.....	4
C. The Pole Attachment Agreement Requires Zito to Perform Due Diligence in Advance of Submitting Its Applications to Attach	6
D. Zito Does Not Perform Its Due Diligence Prior To Submitting Its Applications.....	7
1. Zito uses Penelec’s survey and design work to determine the least expensive route	7
2. Zito’s pole profile sheets show Zito does not properly perform its due diligence.	8
3. Zito’s failure to perform competent due diligence is dangerous	9
E. Zito Can and Should Perform Joint Ride-Outs with Sigma	11
F. Zito Has Not Substantiated Its Claim That Zito Is Being Improperly Charged to Correct Pre-Existing Violations.....	13
G. Penelec’s Pre-Attachment Inspection Process is Consistent with Other Utility Practices and is Necessary to Safely and Effectively Administer Attachment Requests	14
1. Zito’s claim that Penelec’s pre-attachment inspection fees are excessive is unsubstantiated	14
2. Sigma’s survey and engineering process is consistent with the practices of other utilities.....	15
3. The information Sigma collects is necessary to safely and efficiently process attachment requests	17
4. Pole loading studies are a necessary component of the attachment process	19
5. Zito could reduce the cost of Sigma’s pre-attachment inspection and design process if Zito were to participate meaningfully in the pre-attachment inspection process.....	21
6. Penelec does not benefit from the data it collects to accommodate new attachment requests	22

7.	Other attachers do not benefit from the pre-attachment survey process.....	24
H.	Penelec’s Invoices and Other Information Supplied to Zito Conform with FCC Rules	25
I.	Penelec’s Make-Ready Construction Charges Are Not Excessive.....	29
1.	Zito’s claim that Sigma’s make-ready construction charges are excessive is unsubstantiated	29
2.	The “less costly construction alternatives” Zito appears to recommend are poor construction practices	30
J.	Temporary Extension Arm Attachments Are Not Available to Communications Companies That Do Not Pay Their Bills.....	31
K.	Penelec Hired Sigma and Has Allowed the Installation of Temporary Attachments in Order to Address Make-Ready Deadlines.....	35
L.	Zito is not Qualified to Select Penelec’s Contractors.....	37
M.	Penelec Cannot Verify Whether Zito Has Federal Pole Attachment Rights.....	38
III.	CONCLUSION.....	39

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Pennsylvania Electric Company (“Penelec”), by its attorneys, respectfully submits this Response to the Complaint filed in this proceeding by Zito Media, L.P. (“Zito”). In support of its Response, Penelec states as follows.

I. INTRODUCTION

Penelec has worked hard to accommodate Zito attachment requests in an environment where poles are becoming more crowded and attachment requests more numerous. Like other utilities, to comply in an effective manner with FCC make-ready deadlines, Penelec has

developed a safe and efficient process for accommodating new attachment requests, by hiring an outside contractor Sigma Technologies (“Sigma”). Penelec also took the extraordinary measure of allowing Zito to attach temporarily while its requests for permanent attachments were being processed.

Zito’s Complaint now attempts to discredit Penelec’s efforts to accommodate Zito, with ill-considered, unsupported, and otherwise objectionable arguments. Accordingly, Penelec respectfully requests that the Commission dismiss or otherwise deny Zito’s Complaint.

II. ARGUMENT

A. The Parties Have Not Yet Engaged in Executive-Level Discussions

Commission rules require that executive-level discussions take place before an entity may file a pole attachment complaint. Section 1.1404(k) states:

(k) The complaint shall include a certification that the complainant has, in good faith, engaged or attempted to engage in executive-level discussions with the respondent to resolve the pole attachment dispute. Executive-level discussions are discussions among representatives of the parties who have sufficient authority to make binding decisions on behalf of the company they represent regarding the subject matter of the discussions. Such certification shall include a statement that, prior to the filing of the complaint, the complainant mailed a certified letter to the respondent outlining the allegations that form the basis of the complaint it anticipated filing with the Commission, inviting a response within a reasonable period of time, and offering to hold executive-level discussions regarding the dispute. A refusal by a respondent to engage in the discussions contemplated by this rule shall constitute an unreasonable practice under section 224 of the Act.¹

Zito claims that Zito and Penelec have engaged in executive-level discussions.² This claim is inaccurate. Instead, as expressed in Penelec’s September 20, 2017 letter to Zito, which

¹ 47 C.F.R. §1.1404(k).

² *Zito Media, L.P. v. Pennsylvania Electric Company*, Proceeding No. 17-316, Bureau ID No. EB-17-MD-006, Pole Attachment Complaint at 24-25, ¶¶ 65-69 (Nov. 13, 2017) (“*Complaint*”).

is attached to Zito's Declaration of James Rigas at Exhibit 2, Penelec disputed Zito's suggestion that executive-level discussions had taken place but offered to arrange such executive-level meetings:

Initially, I must disagree that executive level discussions have taken place. While Penelec brought its engineering manager into discussions for the latest meeting, from our perspective it was for the purposes of explaining to each other our concerns, policies, and positions. It was my suggestion for the players to meet face-to-face in the hope that understandings may improve with more-personal interaction. More importantly, I hoped that we would pursue opportunities to brainstorm for creative solutions that meet both of our needs, and invited Sigma to attend for that purpose. I would be happy to work with you to arrange executive-level discussions if you wish.³

Rather than accept Penelec's offer to arrange executive-level discussions, Zito simply argued that such discussions had already occurred.⁴ One party's incorrect assumption that executive-level discussions have taken place is not sufficient to satisfy the rule. Instead, the complainant is required to have "mailed a certified letter to the respondent outlining the allegations that form the basis of the complaint it anticipated filing with the Commission, inviting a response within a reasonable period of time, and offering to hold executive-level discussions regarding the dispute."⁵ Penelec has not received any such letter (or any other request for executive-level meetings), and Zito's Complaint does not certify that Zito ever sent such a letter, as required by the rule. By failing to request executive-level meetings, Zito's premature Complaint short-circuits the progress being made and defeats the purpose of the rule to attempt to avoid unnecessary expense and delay.

³ *Complaint* at Attachment A, Ex. 2 ("*September 20 Letter from Stephen Schafer*").

⁴ "Finally, I take issue with your statement that executive level discussions between Zito and Penelec have not yet occurred. The July 25, 2017 meeting between the parties in Erie, attended by myself, as well as you, Bob Chumrik, Deanna DeWitt, and Wallace Cunningham, on behalf of Penelec, and Ryan Hetrick on behalf of Sigma, clearly fulfilled this requirement." *Complaint* at Attachment A, Ex. 3 ("*October 5, 2017 Letter from James Rigas*").

⁵ 47 C.F.R. §1.1404(k).

Penelec therefore respectfully requests that the Commission dismiss Zito's Complaint, with leave to re-file its complaint after Zito agrees to Penelec's offer to schedule executive-level discussions.

B. Due Diligence and Compliance with The Pole Attachment Agreement by Zito Would Resolve Most Issues in Its Complaint

Zito claims that it has been excluded from the pre-attachment inspection process, and specifically requests an order: "Requiring Penelec to allow Zito to conduct the pre-attachment survey and to accept and consider Zito's Pole Profile sheets as part of its make-ready work analysis, as required by the Agreement."⁶ Zito claims:

Without the ability to participate in the pre-attachment inspection process, particularly through a joint ride-out, Zito cannot timely evaluate whether the proposed make-ready work is reasonable under the circumstances, whether it should proceed with the work or re-route its facilities, or whether there might be solutions that are more efficient and/or cost-effective while still ensuring the safety and integrity of the pole and all of its attachments.⁷

Zito claims that in its experience, "more poles are replaced prematurely using this process, resulting in substantial additional estimated deployment costs."⁸ Zito claims "the parties may agree during a joint ride-out that a pole clearly needs to be replaced, thus eliminating the time and expense associated with a later-conducted full loading analysis."⁹ Zito claims that "[b]ecause decisions are not made in the field but are instead delayed until after extensive additional processing and analysis is performed, Zito's consideration of such alternative routes is unnecessarily delayed."¹⁰ Zito further claims that if the pre-attachment survey process included

⁶ *Complaint* at 44.

⁷ *Id.* at 40, ¶ 102.

⁸ *Id.* at 15, ¶ 35.

⁹ *Id.* at 13, n.54.

¹⁰ *Id.* at 15, ¶ 35.

a joint ride out, Zito could identify pre-existing safety violations Zito claims it should not have to correct.¹¹

The fundamental problem with all of these claims is that Zito could be, and should be, part of the pre-attachment inspection process, but instead is simply not doing its part. As explained below, the pole attachment agreement requires Zito to provide Pole Profile Sheets to enable Zito to evaluate in advance the routes it wants to apply for, to recommend make-ready work, and to communicate to Penelec whatever Zito wants to communicate.¹² After learning Zito was struggling to devote sufficient resources to comply with this process, Penelec made it easier by providing Zito a list of typical high-cost pole conditions that Zito may wish to look for and seek to avoid.

In addition, Zito could accompany Penelec's contractor Sigma when Sigma's technician inspects the poles, or pay the additional cost for Sigma to assign a Professional Engineer qualified to render opinions during a joint ride-out. On that survey, Zito could take its own measurements, provide any information Zito believes is relevant, propose any alternative attachment practice Zito may believe is suitable, propose any solution Zito believes is warranted, and identify any pre-existing safety violation Zito believes another attacher should fix.¹³

Rather than participate meaningfully in the pre-attachment process, Zito simply has elected not to evaluate in advance its proposed routes properly or to devote the time or expense to participate in joint ride outs. To save time and money, nothing prohibits Zito from hiring its own contractor familiar with the National Electrical Safety Code ("NESC") to decide which

¹¹ *Id.* at 13-14, ¶ 32 ("A joint ride-out also allows the participating parties to identify pre-existing non-compliant conditions that would require correction (such as pole replacement) notwithstanding the applicant's proposed attachment and for which the applicant should not be charged").

¹² An alternate route could include different streets, going underground for a single pole or set of poles, leasing dark fiber, or overloading another attacher's facilities. The "street route" might or might not remain the same.

¹³ Declaration of Robert Chumrik at ¶ 5 (Dec. 13, 2017), included at Attachment A ("*Chumrik Declaration*").

routes to select in the first instance.¹⁴ By performing this due diligence, Zito could easily identify pole routes that are congested or otherwise likely to be more expensive than others, and Zito could easily avoid any delay caused by Penelec by choosing an alternate, less expensive route in the first place. In short, if Zito were complying with its pre-attachment inspection obligation prior to submitting its application, Zito would not be wasting Penelec's and its contractors' time by requiring an analysis of pole routes Zito might find too expensive.

If Zito were taking the time to evaluate in advance its proposed routes or to participate in joint ride outs, Zito could determine "which make-ready work is reasonable under the circumstances," "whether it should proceed with the work or re-route its facilities," or "whether there might be solutions that are more efficient and/or cost-effective while still ensuring the safety and integrity of the pole and all of its attachments." If Zito were fully complying with its contract requirement to be part of the pre-attachment inspection process, Zito could identify any pole that "clearly needs to be replaced," thus avoiding a pole loading study on that pole. And if Zito were part of the pre-attachment inspection process, Zito could identify for itself pre-existing safety violations.

This fundamental shortcoming is one of many objectionable aspects of Zito's Complaint.

C. The Pole Attachment Agreement Requires Zito to Perform Due Diligence in Advance of Submitting Its Applications to Attach

The pole attachment agreement between the parties requires Zito to perform due diligence to inspect its route before submitting an application to attach.

Article I, Section 4 of the agreement requires Zito to provide a "Pole Profile Sheet" with its application: "Licensee may request additional pole attachments of owner by submitting

¹⁴ *Id.* at ¶ 6.

further application in the form set forth in Exhibit ‘C’ accompanied by Exhibit ‘D’ – Pole Provide Sheet as attached hereto and made a part hereof.”¹⁵

An example of a Pole Profile Sheet completed by Zito is included at Attachment B, Exhibit 1. As shown, the Pole Profile Sheet requires Zito to identify pole heights, attachment heights, and guying requirements. It enables Zito to recommend make-ready work to be performed, and provides a space for Zito provide notes of anything more that Zito would like Penelec to consider.

The Agreement therefore envisions that Zito will perform due diligence when selecting its pole route, recommend make-ready for any pole to which Zito seeks to attach, and communicate any other information Zito believes is appropriate. By performing this due diligence, Zito can avoid unnecessary time and expense and identify in advance the most efficient and inexpensive pole route it wants Penelec to process.

D. Zito Does Not Perform Its Due Diligence Prior To Submitting Its Applications

As explained below, rather than performing its own due diligence, Zito appears to be relying exclusively on Penelec to determine whether the routes to which Zito proposes to attach are financially viable.

1. Zito uses Penelec’s survey and design work to determine the least expensive route

Penelec’s field inspector Keith Gardner explains that there have been very few times that Zito has not modified its application after Penelec performs survey and design work and then submits to Zito the estimated costs for the project.¹⁶ For example, on November 17, 2015, after Penelec performed the field survey and engineering design work associated with several Zito

¹⁵ *Complaint* at Attachment B, Ex. 1 (“*Pole Attachment Agreement*”).

¹⁶ Declaration of Keith Gardner at ¶ 2 (Dec. 13, 2017), included at Attachment B (“*Gardner Declaration*”).

applications, Zito canceled 40 of 45 poles on one application, 21 of 44 poles on another, 33 of 33 poles on another, 45 of 45 poles on another, 15 of 46 poles on another, and 44 of 45 poles on another.¹⁷ According to Mr. Gardner, this practice has actually worsened since 2015, with Zito modifying or outright canceling additional applications following Penelec survey and design work.

In all of these instances, Penelec essentially has provided to Zito a feasibility study for Zito's proposed fiber line.¹⁸ Zito has routinely foisted its due diligence obligation onto Penelec, and has been depending on Penelec's survey work and design expertise to determine whether the route Zito selected for pole attachments is the least-costly alternative that Zito itself could easily have identified in their up-front route selection.¹⁹

2. Zito's pole profile sheets show Zito does not properly perform its due diligence

Zito complains that "Penelec's contractor Sigma refuses to use Pole Profile Sheets submitted by Zito and instead conducts its own survey collecting all data without utilizing or relying upon Zito's previous work for assistance."²⁰ Zito notes that Pole Profile Sheets are required by the pole attachment agreement, then argues that "[r]equiring a process that is more burdensome than the process set forth in the parties' Agreement is unjust and unreasonable, and thus a violation of Commission rules."²¹

¹⁷ *Gardner Declaration* at ¶ 3.

¹⁸ *Id.* at ¶ 5.

¹⁹ Apparently Zito uses other utility pole owners to perform its feasibility studies. "Zito does not provide any of this information, however, presumably because Zito does not survey any of the PPL poles to which it seeks to attach before submitting its application. Instead, Zito appears to be relying exclusively on PPL to perform a pre-attachment inspection for information about the poles to which Zito seeks to attach." *Zito Canton, LLC v. PPL Electric Utilities Corporation*, Proceeding No. 17-284, Bureau ID No. EB-17-MD-005, Response of PPL Electric Utilities Corporation to Pole Attachment Complaint Filed by Zito Canton, LLC at 6 (Nov. 20, 2017) ("*PPL Response*").

²⁰ *Complaint* at 11, ¶ 25.

²¹ *Id.* at 30-31, ¶ 83.

Zito's Pole Profile Sheets, however, are completely unreliable for engineering purposes, presumably because Zito does not take the time or effort to insist that its survey contractor complete them properly. At Penelec's request, Sigma analyzed the 54 Zito Pole Profile Sheets that were associated with one of Zito's applications. Zito had proposed on June 18, 2016 to attach to 54 Penelec poles using the web-based application SPANS (Spatially-enabled Permitting and Notification System). Out of 54 poles in Zito's attachment request, Sigma found that nine of them contained deficient information, indicating Zito did not properly perform its due diligence and was relying on Sigma to perform the full survey and design work on those poles. Specific examples of the deficient information provided by Zito in this request are identified in the Declaration of Sigma's Ryan Hetrick, attached hereto at Attachment C.

3. Zito's failure to perform competent due diligence is dangerous

Zito's failure to perform competent due diligence in advance of submitting its applications can have grievous consequences. The recent injury alleged by Mr. Thomas Forlina, employed by one of Zito's contractor's Tel-Power, Inc., not only demonstrates Zito's failure to properly complete a Pole Profile Sheet, it shows that Zito will install its facilities in reckless disregard of its own workers' safety.

Mr. Forlina's second amended complaint to be filed this month in Pennsylvania state court alleges that he suffered electrical shock, electrical burns and serious injury on January 27, 2016, while working to attach Zito's fiber to a Penelec pole.²² The complaint includes testimony of Zito's Kelly Ragosta stating Zito had not received permission attach to that pole,²³ and states:

By authorizing, directing, requesting, and/or instructing Mr. Forlina and/or his employer to begin working to attach fiber optics at the subject pole without obtaining a permit, Zito knew that

²² See *Thomas Forlina v. FirstEnergy Corp. and Zito Media, L.P.*, Civ. Action No. 2016-GN-2184, Second Amended Complaint in Civil Action at ¶ 6 (C.P. Blair), included at Attachment D ("*Forlina Amended Complaint*").

²³ See *id.* at ¶ 65.

Defendant FirstEnergy Corp., t/d/b/a Penelec, and/or Defendant Pennsylvania Electric Company, had not performed make-ready work to the subject pole.²⁴

Zito had requested attachment to the subject pole DC-70521 in 2015. Zito's Pole Profile Sheet for that pole is attached hereto to the Declaration of Keith Gardner. The Pole Profile Sheet includes several Zito measurements that were off by four to six inches. Zito itself identified on the sheet that make-ready work was necessary in order to avoid attaching in violation of the NESC's "communications worker safety zone" that separates communications attachments from energized conductors. Inexplicably, although Zito's Profile Sheet proposed Penelec make-ready construction, it also proposed that Zito's attachment be installed in violation of the NESC communication worker safety zone.²⁵

As explained in Mr. Forlina's complaint, Zito did not wait for Penelec to perform the make-ready construction work, but instead instructed its contractor Tel-Power to send its crew out to attach Zito's fiber despite knowing it had neither a permit, approval for a temporary attachment, nor affirmation from Penelec that the make-ready work had been completed.

Adding further recklessness to Zito's actions, a recent inspection of the pole in question revealed that despite the injury to Mr. Forlina, Zito attached to that very same pole anyway, without authorization, in violation of the NESC communications worker safety zone, and using a permanent attachment technique. This occurred even though Zito apparently has other options to lease dark fiber from, or overlash, existing attachers, or to go underground to avoid high make-ready costs.²⁶

This litigation dispels the notion that Zito has a proper concern for safety.

²⁴ *Id.* at ¶ 61.

²⁵ *Gardner Declaration* at ¶ 12.

²⁶ *Gardner Declaration* at ¶ 15.

Zito claims to have “a vested interest in the safety and integrity of the poles to which it attaches,” states that it has indemnified Penelec against damage, injuries and death, and claims to have valuable input to contribute about how to safely attach to Penelec’s poles.²⁷ The Forlina litigation proves Zito’s “vested interest” in safety is considerably less than Penelec’s, demonstrates how indemnification provisions do not adequately protect utility pole owners, and renders any Zito advice about safety unreliable.

As Mr. Forlina’s second amended complaint states: “Zito made the decision to value profits over the safety of people generally and, ultimately, over the safety of Mr. Forlina, specifically.”²⁸

E. Zito Can and Should Perform Joint Ride-Outs with Sigma

Zito claims that it has effectively been denied the ability to participate in joint ride-outs, so that “Zito cannot timely evaluate whether the proposed make- ready work is reasonable under the circumstances, whether it should proceed with the work or re-route its facilities, or whether there might be solutions that are more efficient and/or cost-effective while still ensuring the safety and integrity of the pole and all of its attachments.”²⁹

As with Zito’s ability to perform competent due diligence prior to submitting applications, nothing prohibits Zito from participating in joint ride outs with Sigma but bother and expense.

Zito states that after multiple requests it participated in a joint ride out with Sigma, but that the Sigma representative was too inexperienced to discuss potential make-ready work. Zito notes that Penelec offered to have a Sigma “supervisor” perform the ride-out for \$88 per hour,

²⁷ *Complaint* at 14, ¶ 34.

²⁸ *Forlina Amended Complaint* at ¶ 73.

²⁹ *Complaint* at 40, ¶ 102.

but complains that Sigma would continue to collect the same information and that make-ready decisions would not be made in the field. Zito suggests this process was too futile and inefficient to continue.³⁰

The actual facts are somewhat different. After Zito requested a joint ride-out, Penelec discussed with Zito what the process would be and explained to Zito that the technician collecting measurements in the field was there to collect measurements and was not qualified to make decisions about make-ready work to be performed. Following the ride-out during which Zito found out for itself that the technician collecting measurements in the field was there to collect measurements and was not qualified to make decisions about make-ready work to be performed, Penelec offered to have a Sigma engineer (not a “technician supervisor”) accompany Zito for the expense of \$88 per hour. As a result, if Zito wanted to accompany Sigma to identify pre-existing violations, Zito could do that. If Zito wanted to accompany Sigma to tell Sigma not to do an engineering analysis on a certain pole because Zito decides to go underground instead, then Sigma would remove the pole from the application so as to avoid any unnecessary analysis. If Zito wanted to accompany Sigma to verify Sigma’s measurements, Zito could do that. If Sigma later were to recommend make-ready construction work that Zito disputes is unnecessary, Zito’s participation in the joint ride-out would provide Zito with information necessary to meaningfully question such recommendations.³¹ In short, Penelec provided Zito with a number of joint ride out options.

As with Zito’s decision not to perform due diligence by competently analyzing its proposed route prior to submitting a pole attachment application, Zito has decided not to

³⁰ *Id.* at 14, ¶ 33.

³¹ *Chumrik Declaration* at ¶ 15.

participate in joint ride-outs with Sigma. In both cases, Zito presumably has decided to save the time and expense of such activities.³²

In short, nothing prohibits Zito from participating in the pre-attachment application process as required by the contract, but Zito simply has not done so. As a result, Zito's claims about what it cannot do because it has been excluded from the pre-attachment application process are meaningless. Zito could perform its due diligence in advance of submitting its applications and Zito could participate in joint ride-outs with Sigma, thus participating in the pre-attachment application process, which would enable Zito to "timely evaluate whether the proposed make-ready work is reasonable under the circumstances, whether it should proceed with the work or re-route its facilities, or whether there might be solutions that are more efficient and/or cost-effective while still ensuring the safety and integrity of the pole and all of its attachments."³³ Whatever internal calculus Zito uses to economically choose between directly-incurred due diligence costs and indirectly-incurred inefficient route selection, it cannot blame Penelec for its choice.

F. Zito Has Not Substantiated Its Claim That Zito Is Being Improperly Charged to Correct Pre-Existing Violations

Zito makes unsubstantiated claims "upon information and belief" that Zito is being improperly charged to correct pre-existing violations on Penelec's poles even though this work

³² Zito notes that Zito and Penelec historically conducted joint ride-outs and that it remains the process in Penelec's territory south of I-80. *Complaint* at 32. Actually, Sigma was brought in to work on projects for other companies north of I-80 too. Zito's large jobs are almost all in the north, and are nearly equal to the total number of poles requested from all other attachers combined. Penelec intends to transition to using Sigma for all attachers both north and south of I-80 in order to uniformly meet make-ready deadlines, but needed to start somewhere. *Chumrik Declaration* at ¶ 16.

³³ *Complaint* at 40, ¶ 102.

would be required anyway.³⁴ Zito claims: “Based upon Penelec’s make-ready cost estimates, it appears that Penelec is requiring Zito to pay to correct pre-existing non-compliance, including for pole replacements, that are unrelated to Zito’s proposed attachment.”³⁵

Penelec does not know what Zito is referring to and cannot respond to unsubstantiated accusations based on unidentified cost estimates and other “information and belief.” Zito’s Complaint therefore fails to explain how Penelec may have done something wrong and therefore fails to make a *prima facie* claim, as required by the rules.³⁶

G. Penelec’s Pre-Attachment Inspection Process is Consistent with Other Utility Practices and is Necessary to Safely and Effectively Administer Attachment Requests

Zito raises a number of concerns about Penelec’s pre-attachment inspection process which are unsubstantiated, unfounded, groundless or otherwise unjustified.

1. Zito’s claim that Penelec’s pre-attachment inspection fees are excessive is unsubstantiated

Zito claims that Sigma’s pre-attachment inspection charges “far exceed” what Zito claims that “other” unidentified pole owners in Pennsylvania charge.³⁷ Zito claims the average of other

³⁴ *Id.* at 21, ¶ 51 (“Upon information and belief, Sigma charges for and requires Zito to pay to correct pre-existing non-compliant conditions on Penelec’s poles even though such work would be required regardless of whether Zito attaches to the pole”).

³⁵ *Id.* at 34, ¶ 89.

³⁶ See 47 C.F.R. § 1.1404(m)(5). To substantiate its claim, Zito improperly cites out of context comments filed in the ongoing pole attachment rulemaking proceeding: “Indeed, Penelec’s coalition has urged the Commission to adopt a rule that, ‘If a new attacher seeks to attach to a pole that has pre-existing safety violations on it, then the new attacher pays for the make-ready.’ Comments of Coalition of Concerned Utilities at 19.” *Complaint* at n.158. But that is not the Coalition’s proposal. The Coalition’s proposal, which is one of nine measures proposed to help resolve make-ready delays and expense, is as follows:

“5. If A New Attacher Seeks to Attach to A Pole That Has Pre-Existing Safety Violations on It, Then the New Attacher Pays for The Make-Ready but Can Seek Reimbursement of 100% of the Expense from The Communications Company Entity on The Pole That Caused the Violation. If the Cause of The Violation Cannot Be Determined, The New Attacher Pays for The Make-Ready but Can Seek Reimbursement of the Expense on A Pro Rata Basis with Any Communications Company Entity on The Pole That May Have Caused the Violation.”

Comments of the Coalition of Concerned Utilities, WC Docket No. 17-84 at 19 (July 17, 2017).

³⁷ *Complaint* at 16, ¶ 40.

Pennsylvania pole owners for the pre-attachment inspection process is \$27.83, but does nothing to substantiate this figure.³⁸ Zito does not identify a single pole owner used in its survey, does not provide any of the underlying data that might support its survey results, and does not identify the pre-attachment inspection processes that might or might not be followed by any of these other pole owners. For that matter, Zito does not indicate whether the poles “surveyed” even have any electric assets, or are otherwise statistically representative or logically consistent with the comparison Zito attempts. Penelec already requested support from Zito during discussions last spring for Zito’s unsubstantiated claims that Penelec’s charges were “excessive” when compared to other pole owners, but Zito never provided it.³⁹ As a result, neither Penelec nor the Commission can understand what this survey means, determine if it has any significance, or verify its accuracy.

2. Sigma’s survey and engineering process is consistent with the practices of other utilities

Zito notes, without mentioning any specifics and “upon information and belief,” that Sigma’s pre-attachment inspection “collects exhaustive information about the condition of the poles as well as information concerning Penelec’s and other entities’ facilities attached to the poles.”⁴⁰ Zito claims, “upon information and belief,” that “Sigma’s analysis of the data exceeds what is necessary to accommodate Zito’s attachment.”⁴¹ Based on this unsupported and

³⁸ Zito notes that “[w]hen Zito performs the survey itself in connection with its submission of a Pole Profile Sheet in Penelec’s territory South of I-80, the cost is \$17 per pole.” *Id.* at 17, n.77. That Zito’s costs per pole is so low is understandable. Zito’s pole profile sheets are deficient, as explained above, so that Zito is not taking sufficient time or devoting proper personnel to completing the Pole Profile Sheets. In addition, the Pole Profile Sheets themselves do not contain all of the information necessary to perform an engineering design. They do not show laterals going down the side, do not show service drops, do not show mid-span measurements, and do not show tensions. Zito’s Pole Profile Sheet also does not include any loading analysis, and does not constitute engineering design or the preparation of a make-ready construction estimate, all of which Sigma includes in its professional, accurate and reliable pre-attachment survey and design process. *Chumrik Declaration* at ¶ 18.

³⁹ *Chumrik Declaration* at ¶ 19.

⁴⁰ *Complaint* at 11, ¶ 25.

⁴¹ *Id.* at 10, ¶ 24. The only specific data analysis Zito cites is a pole loading analysis on every pole. *Id.* at 11, ¶ 26.

unspecific information and belief, Zito argues that Sigma's pre-attachment survey "includes extensive data collection and analysis that far exceeds what is necessary to determine whether and where Zito's attachments are feasible."⁴² Setting aside Zito's lack of qualifications to render such an opinion, its assertions are simply incorrect.⁴³

Penelec's pre-attachment survey and engineering process is as follows. Penelec's contractor Sigma performs make-ready survey and engineering design work for new attachment requests. During pole surveys, Sigma collects the following information for each pole: the identity of pole attachers; the location and height of attachments on each pole; the class of the pole; measurements of midspan clearances; measurements of the length and direction of all cables, road crossings, railroad crossings, anchoring, risers, and grounds; and several photographs of each pole. This information is then put into Penelec's work order management system to support engineering design for Zito's requested attachments. Following each pole survey, Sigma performs a pole loading study, not for each surveyed pole, but for representative worst-case poles in a proposal, using Line Design Engineering.⁴⁴ Sigma then creates a make-ready design and make-ready cost estimate, which consists of all incurred costs attributable to the attachment request being passed through to the attachers.⁴⁵

With the minor exception that Sigma performs pole loading studies on worst-case poles not every pole, and that Sigma does not collect GPS coordinates, this is the process Penelec's Professional Engineer Robert Chumrik described a few weeks ago in his Declaration attached to

⁴² *Id.* at 30-31, ¶ 83.

⁴³ Zito does not claim to have even hired a contractor to perform electric asset engineering, let alone ever have performed such engineering analyses itself.

⁴⁴ As explained in the Declaration of Ryan Hetrick, "Sigma does not complete a pole loading study on every pole. Instead, we generally perform a pole loading study on one worst case scenario pole in each proposal and continue with additional pole analysis until a pole state which passed loading evaluation was identified and therefore no further loading analysis was required to assess the safety of the additional proposed attachments." Declaration of Ryan J. Hetrick at ¶ 6 (Dec. 13, 2017), included at Attachment C ("*Hetrick Declaration*").

⁴⁵ *Chumrik Declaration* at ¶ 20.

the Response of PPL Electric Utilities Corporation (“PPL”) to a similar Complaint filed by Zito Canton, LLC.⁴⁶ This process that Penelec follows and that Zito objects to is not at all uncommon. PPL follows a similar process, as explained in its Response.⁴⁷ So do several other utility pole owners, as explained in the Declarations of these other utilities attached to PPL’s Response and attached hereto at Attachment E. Penelec’s pre-attachment application and engineering review process is therefore very similar in scope and cost to the pre-attachment application and engineering review process followed by many other utilities. The process described by all of these seven utilities includes hiring a contractor to perform some combination of all or almost all of the following:

- Collect GPS coordinates of the requested poles
- Collect information about existing attachments on those poles
- Photograph the poles, surrounding areas and mid-spans
- Transfer all this information to an interactive map
- Upload the information to the utility’s database
- Perform a pole loading study on every pole
- Design make-ready construction work using this information
- Prepare make-ready construction estimates

3. The information Sigma collects is necessary to safely and efficiently process attachment requests

Like other utility pole owners, Penelec is striving to comply with FCC make-ready deadlines in an environment where poles have become more and more congested and attachment

⁴⁶ *PPL Response* at Attachment D.

⁴⁷ “Zito explains PPL’s data collection process as follows:

As part of the field survey, PPL’s contractor collects information about the poles as well as information concerning PPL’s and other entities’ facilities attached to the poles, including multiple photographs of each pole, the surrounding area, and adjacent mid-spans. The information about each pole is then transferred to a Google-earth-like interactive map which, along with electronic profiles of the poles, including metadata such as GPS coordinates, is uploaded to a PPL portal site (designed by a contractor for PPL.)” *Id.* at 12-13.

requests have multiplied. Zito, for example, has submitted approximately 190 applications to attach to more than 4200 Penelec poles since February 2016.⁴⁸

To assist in complying with the deadlines associated with Zito's considerable number of attachment requests and to ensure Penelec's standards and codes are met in an efficient manner, Penelec hired Sigma. Sigma has improved the consistency, accuracy and speed of data collection, rendering the make-ready design process more efficient and reliable.

The identity of the pole attachers, the location and height of attachments on each pole, the class of the pole, measurements of midspan clearances, measurements of the length and direction of all cables, road crossings, railroad crossings, anchoring, risers, and grounds is needed for safety reasons in addition to meeting the NESC and Penelec safety standards. Sigma collects this information to prevent hazards for linemen and the public. Sigma takes at least three photographs per pole to give the designers a better description of the reality in the field, which is more helpful than simply providing numbers. Pole loading studies are performed to ensure that NESC loading limitations are not exceeded.⁴⁹

Since Penelec hired Sigma in August 2016, Penelec has not marked up any of the costs that Sigma charges, but instead simply passes them through as a cost for the incremental services rendered to support attacher requests to affix facilities to Penelec's poles. Sigma has been performing the same pre-attachment inspection and engineering work for several other Penelec attachers since Sigma was hired in August 2016, and Sigma has worked successfully with these other companies since that time. Only Zito has complained.⁵⁰

⁴⁸ *Chumrik Declaration* at ¶ 21.

⁴⁹ *See id.* at ¶ 24.

⁵⁰ *Id.* at ¶ 23.

4. Pole loading studies are a necessary component of the attachment process

Like many other utilities, Penelec performs a loading analysis on certain poles to which Zito and other attachers seek to attach. A pole loading study takes into account numerous factors necessary to determine whether a pole meets NESC strength and loading requirements based on the construction grade of the line and environmental loading district for the pole.⁵¹

Despite the need to determine whether the pole meets NESC strength and loading requirements, Zito contends that a loading analysis on each pole is unnecessary, claiming they only need to be performed on poles that are “complex and borderline overloaded,” and noting that another Pennsylvania utility, PPL Electric Utilities Corporation (“PPL”), argued in its 2016-17 Biennial Report to the Pennsylvania Public Utility Commission (“PaPUC”) that a pole loading analysis on every pole was unnecessary as part of its inspection program.⁵²

In its November 20, 2017 Response to the Complaint filed by Zito Canton, LLC, PPL explained why it performs pole loading analyses when new attachments are installed but is less inclined to perform them during its PaPUC-mandated 10-year inspection program as follows:

The reason PPL performs pole loading analyses when new attachments are proposed, and is less inclined to perform them on structures that are not proposed to be modified, is because the NESC requires an analysis of NESC compliance whenever new attachments are added but not otherwise. The code requires that an existing structure must meet code requirements “where conductors or equipment is added, altered, or replaced on an existing structure” (NESC Rule 013B3). Conversely, “[e]xisting installations, including maintenance replacements, that currently comply with prior editions of the Code, need not be modified to comply” with the new code (NESC Rule 013B2).⁵³

Penelec agrees with this analysis.

⁵¹ *Id.* at ¶ 24.

⁵² *Complaint* at 32, ¶ 85.

⁵³ *PPL Response* at Attachment C, ¶¶ 6-11.

Zito supports its claim that a loading analysis is only required on poles that are “complex and borderline overloaded” by relying on the Osmose website as follows:

For example, one third party contractor that performs work for PPL, Osmose, states that it can utilize software to estimate pole load, which identifies “poles that are clearly less than fully loaded and poles that are most probably overloaded.” Pole Loading & Clearance Analysis, Osmose, available at <http://www.osmose.com/pole-loading-clearances> (last visited on Nov. 6, 2017). This software allows Osmose to reduce expenses by only conducting a comprehensive loading analysis on those poles that are “complex and borderline overloaded.”⁵⁴

As identified on the Osmose website, the software Zito references is called “LoadCalc.” As explained by Osmose after clicking on the “LoadCalc” link for more information: “LoadCalc can help quickly identify potentially overloaded poles” and “LoadCalc ... allows an Osmose inspector to estimate bending load on a pole in real-time using span lengths, estimated wire and equipment sizes, and estimated attachment heights.” It is advertised as a “cost-effective groundline pole load estimate during routine inspections.”⁵⁵ Osmose’s LoadCalc application is thus intended for use as part of a pole inspection and maintenance program for existing poles subject to inspection with no proposed construction. It determines which poles in their current condition are candidates for reinforcement or replacement. It is not an engineering analysis designed for construction additions to those poles, such as new communications attachments. It would not be prudent to make decisions on the safety of a structure based on “estimates” or “potential” results. Instead, an engineering analysis based on accurate measurements and calculations is warranted for new attachment requests. This is why many utilities perform pole loading studies on every pole to which attachment is sought.⁵⁶

⁵⁴ *Complaint* at 12, n.49.

⁵⁵ Osmose website, “LOADCALC SOFTWARE FOR POLE INSPECTION,” available at: <http://www.osmose.com/content/pages/loadcalc> (last visited Dec. 8, 2017).

⁵⁶ *Chumrik Declaration* at ¶ 26.

In any event, Zito's assumption that Penelec performs a pole loading study on every pole is incorrect. Sigma does not complete a pole loading study on every pole, but instead on representative worst-case poles in a proposal.⁵⁷

5. Zito could reduce the cost of Sigma's pre-attachment inspection and design process if Zito were to participate meaningfully in the pre-attachment inspection process

As explained, Zito's incorrect and unreliable Pole Profile Sheets were presumably completed using unqualified inspectors in a hurry, and Zito is able to but does not participate in joint ride-outs with Sigma. If Zito were to participate meaningfully in the pre-attachment inspection process, Penelec explained how Zito could reduce its costs, as follows:

Finally, I would urge you to explore whether and how Zito can benefit from Penelec's suggestion to screen high-cost poles from your routes before submitting your proposals. From Penelec's perspective, Zito appears to be selecting routes without regard to pole conditions which is a main contributor to higher pre-construction costs. As mentioned, it takes longer to measure and design poles that are more complicated. The majority of Penelec's other attachers include recommended or suggested make-ready requirements with their proposals, and seldom drop poles or re-route paths after receiving Penelec's make-ready estimates. Zito, on the other hand, drops or re-routes a significant proportion of poles from its proposals, waiting until after Penelec has incurred costs to survey and engineer before choosing alternatives. As has been apparent in discussions and in your letter, Zito wants on-the-spot make-ready decisions that Zito then uses to alter its routes. Penelec cannot accommodate such a process and still provide engineering estimates that are both timely and properly ensure the integrity of its pole plant. Engineering is not a drive-by science.⁵⁸

⁵⁷ See *Hetrick Declaration* at 6. See also *Chumrik Declaration* at ¶ 20. The Declaration of Robert Chumrik attached to PPL's Response to Zito's complaint incorrectly stated that Penelec performs a pole loading analysis on every pole, and that GPS coordinates are collected on every pole. Upon further discussion with Sigma, Mr. Chumrik has corrected these mistakes in his Declaration included at Attachment A. See *PPL Response* at Attachment D.

⁵⁸ *September 20 Letter from Stephen Schafer*. In addition, Penelec's Bob Chumrik's April 17, 2017 email to Zito's Kelly Ragosta explained: "Reduction in the number of poles submitted or the number of poles that have complex designs involved with them would reduce the average cost per pole." April 17, 2017 Email from Robert Chumrik to Kelly Ragosta, included at Attachment F.

Further responding to Zito's request to control costs, Penelec provided Zito a list of typical expensive poles that Zito may wish to avoid by choosing an alternate route, to make it easier for someone with lesser qualifications to find less expensive routes:

We will provide a checklist for Zito to use as a guide to identify high-cost make-ready poles. This should aide Zito in the identification of low-cost routes prior to submitting the SPANS Proposal, thereby avoiding the more-costly engineering make-ready poles. This may also save time and cost by reducing the need for Zito to remove poles from already-submitted proposals in SPANS.⁵⁹

In a further effort to address Zito's expense concerns, Penelec allowed Zito in its discretion to discontinue submitting Pole Profile Sheets for poles to be engineered by Sigma.⁶⁰ While abandoning pre-proposal due diligence is not considered by Penelec to be a preferred practice, it exemplifies Penelec's efforts to provide choices to Zito within the parameters of Penelec's own due diligence obligations.⁶¹

6. Penelec does not benefit from the data it collects to accommodate new attachment requests

Zito objects to paying the entire cost of the pre-attachment survey process, because "Penelec uses the survey process to obtain valuable information about its poles for its own purposes and to satisfy its own state regulatory obligations to periodically inspect its poles, including its obligation to conduct load calculations for each pole."⁶² Zito suggests it is also paying for "company betterment," as follows: "Sigma recently conceded that during the pre-

⁵⁹ August 1 and September 5, 2017 Emails from Stephen Schafer to Colin Higgin. The August 1 and September 5 emails as well as a copy of the checklist provided to Zito are included at Attachment G ("*August 1 and September 5 Emails from Stephen Schafer*").

⁶⁰ *August 1 and September 5 Emails from Stephen Schafer* ("Zito may at its discretion discontinue submitting Pole Profile Sheets for any proposals that will be engineered by Sigma Technologies").

⁶¹ *Chumrik Declaration* at ¶ 27.

⁶² *Complaint* at 31, ¶ 84. See also *id.* at 12-13, ¶¶ 28, 30.

attachment survey, it collects information about the poles and existing facilities on the poles for Penelec's benefit, including for construction classified as 'company betterment.'"⁶³

Neither of these claims is accurate.

None of the information gathered by Sigma for Zito or for any other attacher is used for the pole inspections required by the Pennsylvania Public Utility Commission ("PaPUC"). The data Penelec gathers during this state-required inspection is gathered systematically on a 10-year inspection cycle, not randomly like pole attachment requests. The reason none of attachment request information is used is that the process of organizing this attachment request data and coordinating such data with Penelec's state inspection process would be unsystematic, confusing and difficult, and cost more money than anything Penelec might save.⁶⁴

As for "company betterment," in the course of surveying the poles in Zito's application, Penelec instructs Sigma to note any Penelec equipment that is out of compliance with current standards. One example is when an old porcelain-type piece of equipment must be replaced with polyurethane-type material. Another is when a transformer is too small or is overloaded. In such cases, Sigma's design will include replacing the equipment. However, if any of this work generates more than an insubstantial, incidental cost, the cost for that work is removed from Sigma's engineering survey charge. Zito is therefore not charged for any of this "company betterment."⁶⁵

Zito states that it cannot verify whether or to what extent it is paying Sigma engineering charges associated with such betterment work.⁶⁶ At the present time that is correct, but in response to Zito's request for additional information about certain betterment engineering costs,

⁶³ *Id.* at 31, ¶ 84, citing Declaration of Kelly Ragosta at ¶17 and Ex. 2.

⁶⁴ *Chumrik Declaration* at ¶ 28.

⁶⁵ *Id.* at ¶ 29.

⁶⁶ *See Complaint* at 12, ¶ 27.

Penelec answered Zito's questions about specific poles and volunteered to develop documentation in its engineering estimates to identify company betterment to avoid further confusion.⁶⁷

Apart from company betterment information for which Zito is not charged, none of the information gathered by Sigma benefits Penelec. While the data gathered about attachment heights, pole loading, tensions, mid-span clearances and other information that Sigma collects is put into Penelec's work order management system to support engineering design for Zito's requested attachments, none of it except for the name of the new attacher is put into any permanent Penelec database. And the only reason this information is gathered is to accommodate Zito's attachment requests.⁶⁸

7. Other attachers do not benefit from the pre-attachment survey process

Zito claims that because "the information collected by Sigma during the pre-attachment survey process benefits Penelec and other entities attached to the pole, such costs should not be borne wholly by Zito. Instead, the costs should be recovered by Penelec from attaching entities, if at all, through the rental rate, which allocates maintenance and administrative costs to attachers proportionate to the amount of pole space occupied."⁶⁹ Zito also suggests that future attachers may benefit.⁷⁰

⁶⁷ October 27, 2017 Email from Robert Chumrik to Kelly Ragosta, included at Attachment H ("*October 27 Email from Robert Chumrik*") ("We also envision including documentation denoting company betterment that should help avoid any further confusion").

⁶⁸ *Chumrik Declaration* at ¶ 30. Zito's evidence does not support its suggestion that "Sigma recently conceded that during the pre-attachment survey, it collects information about the poles and existing facilities on the poles for Penelec's benefit" apart from this company betterment. Instead, the only information Sigma indicated was collected for Penelec's benefit was the company betterment information. *Complaint* at 31, ¶ 84, citing Ragosta Declaration at ¶¶ 17 and Ex. 2.

⁶⁹ *Id.* at 31, ¶ 84.

⁷⁰ *Id.* at 31, n.151.

Zito provides no explanation for how existing or future attachers might benefit, much less any evidence to support its claims. The only benefit to other attachers of Penelec's safe and efficient survey and engineering process is that existing and future attachers get to attach to safe and reliable infrastructure.⁷¹ But the cost to ensure that new attachments are not installed improperly in a way that would jeopardize the safe and reliable infrastructure to which existing attachers rely is the responsibility of the new attacher, not the existing attachers.⁷² Merely endeavoring to prevent degradation of the electric system from the new attachment cannot be considered a betterment to Penelec, as Zito stubbornly repeated during negotiations, and Zito's attempt to externalize its costs through Commission action should be denied.

H. Penelec's Invoices and Other Information Supplied to Zito Conform with FCC Rules

Zito claims it cannot tell from Sigma's estimates for engineering costs precisely what tasks are being performed and whether the tasks and costs are reasonable or attributable to Zito.⁷³ Zito claims Penelec has not responded to Zito's repeated requests to substantiate these engineering charges.⁷⁴

Similarly, Zito claims that Penelec's make-ready construction invoices do not provide the information necessary to enable Zito to verify whether the proposed make-ready construction charges are reasonable.⁷⁵ Zito claims Penelec has not responded to Zito's repeated requests to

⁷¹ *Chumrik Declaration* at ¶ 31.

⁷² Zito's suggestion that such costs could be recovered through the annual rental rate is inaccurate, as explained by the Coalition of Concerned Utilities in the ongoing pole attachment rulemaking proceeding in WC Docket No. 17-84. As explained, if \$2,000,000 were added to the administrative expense in the pole attachment rate formula for an average-size utility, the annual attachment rate would increase by one cent (\$0.01), permitting cost recovery over 3 million attachments of \$30,000 of the \$2,000,000 expense. If the expense were \$1,000,000, the rate would not change at all, so that the utility would recover none of its \$1,000,000 expense. *See Comments of the Coalition of Concerned Utilities*, WC Docket No. 17-84 at 38 (July 17, 2017).

⁷³ *Complaint* at 15, ¶ 37. *See also id.* at 17, ¶ 41.

⁷⁴ *Id.* at 17, ¶ 41.

⁷⁵ *Id.* at 17-18, ¶ 44.

substantiate these make-ready construction charges.⁷⁶ Zito asserts, “Without these essential details, Zito is unable to evaluate whether the make-ready work charges are reasonable or fairly attributable to Zito and thus, whether to proceed with the work, consider a less costly alternative route, or whether other safe, yet more cost-effective solutions should be pursued.”⁷⁷

To the contrary, it appears Zito already understands the pre-attachment inspection and engineering work that is performed on each pole, and understands the make-ready construction work to be performed on each pole. Zito certainly understands enough already to drop poles from its applications, because it does so frequently. And Zito could easily gather whatever additional information it might need prior to submitting its applications, using the Pole Profile Sheet process. Zito could also accompany Sigma on joint ride outs to determine for itself the information Sigma collects for each pole and how the design process works, as explained above.⁷⁸ In any event, the information Sigma currently provides, combined with Zito’s own analysis, has apparently to date been sufficient.

To further assist Zito, and as explained above, Penelec recently agreed voluntarily to develop documentation in its engineering estimates to identify company betterment to avoid further confusion, in response to Zito’s request for additional information about certain betterment engineering costs.⁷⁹

Moreover, Penelec was intending to produce documents soon in response to Zito’s request that Penelec follow the make-ready invoice process of Penelec’s sister company Ohio Edison. As explained in Zito’s Complaint:

⁷⁶ *Id.* at 18, ¶ 45.

⁷⁷ *Id.* at 17-18, ¶ 44.

⁷⁸ *Chumrik Declaration* at ¶ 32.

⁷⁹ *See October 27 Email from Robert Chumrik* (“We also envision including documentation denoting company betterment that should help avoid any further confusion.”).

On June 22, 2017, Zito provided Penelec with an example of a sufficiently detailed make-ready estimate that Zito had received from another pole owner. More than four months later, on October 27, 2017, Penelec responded to Zito that Penelec was “working with Sigma to develop a detailed engineering drawing package following the example you sent us.” Despite Penelec’s acknowledgement that its estimates are deficient and that more detail is required to enable Zito to assess the reasonableness of the proposed work and charges, Penelec still has not provided Zito with make-ready estimates containing the requisite details.⁸⁰

Zito’s Complaint did not include a copy of the “sufficiently-detailed make ready estimate” of which Zito approves, but it is an invoice and associated detailed maps from Ohio Edison, in a non-FCC jurisdictional state, and a copy is attached hereto at Attachment I, Exhibit 1. As mentioned by Zito, Penelec agreed on October 27, 2017 to provide a detailed engineering drawing package to Zito that is modeled after this Ohio Edison example.⁸¹ But just two and one-half weeks after Penelec agreed to provide this detailed engineering package, Zito filed its Complaint without waiting for the package.⁸²

This “sufficiently-detailed make ready estimate” Zito asked for and Penelec agreed to provide includes significantly more information than just a single line make-ready engineering or

⁸⁰ *Complaint* at 20-21, ¶ 49.

⁸¹ *See October 27 Email from Robert Chumrik*

(“In accordance with Steve Schafer’s letter to Mr. Rigas, I am currently working with Sigma to develop a detailed engineering drawing package following the example you sent us from Ohio Edison. Our plan will be to send this drawing package as an attachment to the SPANS estimate proposal. We also envision including documentation denoting company betterment that should help avoid any further confusion. Please let me know if you have any questions.”)

⁸² Incidentally, the Ohio Edison engineering costs Zito mentioned in its June 22, 2017 email were identified as approximately \$79 per pole. *See Complaint* at Att. D, Ex. 8; *See also* June 22, 2017 Email from Kelly Ragosta to Stephen Schafer, included at Attachment I, and the Ohio Edison invoice and associated detailed maps included at Attachment I, Exhibit 1. The spreadsheet Zito prepared and attached to that email (but which Zito did not include in its Complaint) shows an average of exactly \$79.27 per pole was charged for each of several dozen applications covering 1388 poles. That is inaccurate, as each application in fact had different average engineering costs based on the proportion of electric-and ILEC-owned poles. More important, the data Zito gathered for this Ohio Edison estimate was six years old from 2011, as indicated by the August 1, 2011 date on the maps, and represented stale costs that pre-dated by four years Ohio’s adoption of make-ready deadlines for electric companies. The current estimated average survey and engineering design cost per Ohio Edison pole is a little over \$175 per pole, with requirements for considerably more-detailed “profile sheets” than what Zito provides to Penelec.

construction invoice. As shown by the maps attached hereto at Attachment I, Exhibit 1, it explains the make-ready work that is proposed to be performed (if any) on every pole to which Zito requests an attachment.

Using this “sufficiently-detailed make ready estimate” from Ohio Edison, Zito can easily make a decision “whether the make-ready work charges are reasonable or fairly attributable to Zito,” “whether to proceed with the work,” whether to “consider a less costly alternative route,” or “whether other safe, yet more cost-effective solutions should be pursued.” For example, Zito could decide whether to remove a pole from the application so that Zito can go underground, or whether the entire route should be abandoned for another route because of the congested nature of the pole route and the relative large amount of make-ready work that must be done.⁸³

Not only does this “sufficiently-detailed make ready estimate” from Ohio Edison explain all this information, but as explained above, Zito could easily obtain its own similar information by hiring its own contractor to analyze its pole route prior to submitting any applications or by accompanying Sigma on a joint ride out. Finally, it should be noted that the make-ready construction invoice and the make-ready survey/engineering invoice each provided a single line

⁸³ *Chumrik Declaration* at ¶ 7. To support its claim that utilities must provide sufficient information to substantiate its make-ready charges, Zito cites two FCC orders and a New York Public Service Commission order, suggesting Penelec is at fault for not including the information required by the New York PSC. *Complaint* at 35, n.159, citing *Knology, Inc. v. Georgia Power Co.*, 18 FCC Rcd. 24615, at 24641 ¶ 61 (2003); *Salsgiver Communications, Inc. v. North Pittsburgh Telephone Co.*, 22 FCC Rcd. 20536, 20543 ¶ 22 (Enf. Bur. 2007); and *2004 New York Pole Order*, 2004 N.Y. PUC LEXIS 306, * 23 (“The make-ready invoice shall include at a minimum: date of work, description of work, location of work, unit cost or labor cost per hour, cost of itemized material and any miscellaneous charges.”) Zito faults Penelec’s invoices for not including this information required by the New York Public Service Commission: “Penelec’s estimates do not delineate a schedule of charges or unit-cost pricing for the make-ready tasks performed (such as raise or lower a line on a pole or install a guy) nor do they provide other details about the basis for the overall charges, such as the labor cost per hour, the amount of time estimated for the make-ready task, or the cost of anticipated materials.” *Complaint* at 35, ¶ 91. Zito therefore is attempting to apply a New York PSC requirement that does not exist at the FCC and simply confirms there is no precise FCC standard for what these make-ready invoices should look like.

of charges each for Ohio Edison poles and ILEC poles. Thus, the per-pole itemized cost detail Zito demands in this Complaint far exceeds the example Zito set forth as what it wanted.

I. Penelec's Make-Ready Construction Charges Are Not Excessive

Zito makes unsubstantiated allegations that Penelec's make-ready construction charges are excessive and appears to suggest that Penelec should have allowed certain poor construction practices.

1. Zito's claim that Sigma's make-ready construction charges are excessive is unsubstantiated

Zito makes the unsupported claim that Sigma's make-ready construction charges exceed what "other" Pennsylvania pole owners charge:

[O]n a per pole basis, Sigma's make-ready charges are more than 200% higher than those of other Pennsylvania investor-owned electric utilities and telecommunications companies. Dividing the lump sum charges by the number of poles identified by Sigma as requiring make-ready work, Sigma's average per-pole make-ready charge is \$3,303.56, whereas the average per-pole charge of other Pennsylvania investor-owned electric utilities and telecommunications companies is \$1,068.05.⁸⁴

As with Zito's claim comparing Penelec's make ready engineering charges to unnamed "other" Pennsylvania pole owners, Zito provides no support for its claim. Zito does not name these "other" pole owners, does not identify the work these other pole owners performed, does not compare that work to the work performed by Penelec, and does not explain even one instance of work performed by Penelec that costs too much. Penelec therefore cannot understand what Zito is referring to and cannot respond to Zito's unsubstantiated accusations. Zito has therefore failed to establish a *prima facie* claim regarding this issue, as required by the rules.⁸⁵ Its request

⁸⁴ *Complaint* at 21, ¶ 50.

⁸⁵ *See* 47 C.F.R. § 1.1404(m)(5).

for a refund of unsubstantiated, alleged overcharges for make-ready construction fees should therefore be denied.

2. The “less costly construction alternatives” Zito appears to recommend are poor construction practices

Without explanation, Zito contends Penelec has refused to consider “less costly construction alternatives that would safely and efficiently expedite Zito’s network deployment.”⁸⁶ Zito does not provide even a single example of a safe, less costly construction alternative that Penelec refused to consider, but Zito elsewhere identifies a number of practices that pole owners can follow to accommodate new communications attachments:

For example, there may be no need to replace a pole before the end of its useful life if existing facilities can be raised or lowered, if the attaching entity can safely use an extension arm, boxing or other approved construction technique to gain required clearances, or if the pole can be guyed to balance loads. Conversely, in some situations, the parties may agree during a joint ride-out that a pole clearly needs to be replaced, thus eliminating the time and expense associated with a later-conducted full loading analysis.⁸⁷

Although Zito does not claim Penelec refused to consider any of these practices, Zito’s Complaint seems to suggest that Penelec should consider these practices. Penelec will address each of these practices below.

Penelec already routinely raises or lowers existing attachments, guys the pole to balance the load, and replaces poles where necessary.⁸⁸ Penelec also reached an agreement with Zito to allow temporary extension arms on a case-by-case basis. It appears, therefore, that what Zito really wants is to require Penelec to approve extension arms on a permanent basis and boxing (i.e., opposite side construction). Neither of these practices is advisable on a permanent basis.

⁸⁶ *Complaint* at 113.

⁸⁷ *Id.* at n.54.

⁸⁸ *Chumrik Declaration* at ¶ 33.

Both boxing and extension arms make it more difficult and potentially hazardous for climbers to access the pole.⁸⁹ Boxing also makes it more difficult to change-out (*i.e.*, replace) poles,⁹⁰ and extension arms cause pole loading concerns.⁹¹ And extension arms may be used only to achieve horizontal clearances, and do not remedy vertical clearance violations.⁹²

To the extent Zito believes Penelec's make-ready construction costs are too high because pole replacements could have been avoided when one of these lesser construction practices might have been available, such claims should be denied. Zito has not specifically made such a claim, provided no evidence to support any such claim, and such lesser substitute constructions practices would be inadvisable in any event.

J. Temporary Extension Arm Attachments Are Not Available to Communications Companies That Do Not Pay Their Bills

Zito notes that on or about December 15, 2015, Zito and Penelec entered into a temporary attachment agreement ("TAA") that enabled Zito to install temporary attachments using extension arms (a/k/a brackets) on 50 then-pending applications.⁹³ Zito notes Penelec extended the TAA on August 31, 2016 and February 2, 2017 to include an additional 30 and nine applications, respectively.⁹⁴ Zito notes that the original TAA and these two extensions were not

⁸⁹ *Chumrik Declaration* at ¶ 34. Boxing results in two sides of a pole having wire attachments, which obstructs the climbing space. Extension arms extend beyond the vertical space on the pole thus creating a climbing hazard and even raising the possibility that someone falling from a pole could get caught on that extension arm on the way down. These climbing obstructions are more problematic during storm restoration work when it is more likely that poles will be climbed. *Id.* at ¶ 35.

⁹⁰ *Id.* at ¶ 34. Replacing the pole and transferring the attachments is relatively easy if the attachments are located on only one side of a pole, since the new pole can easily be installed next to the one to be replaced. With boxing, however, the new pole must be inserted between the wires on both sides of the existing pole. This procedure is more costly and time consuming, creates safety hazards and risks damaging the communications facilities that are currently attached. *Chumrik Declaration* at ¶ 36.

⁹¹ *Id.* at ¶ 36. The cantilever effect of extension arms projecting out from the pole results in an extraordinary amount of weight and load being concentrated in a specific area. *Id.* at ¶ 37.

⁹² *Id.* at ¶ 38.

⁹³ *See Complaint* at 8-9, ¶ 18.

⁹⁴ *Id.* at 10, n.34.

conditioned on Zito paying its bills, but complains that Penelec insisted Zito pay its bills before agreeing to yet another TAA extension on October 23, 2017.⁹⁵ Zito claims: “Penelec unreasonably has conditioned Zito’s ability to attach temporarily – i.e., using brackets to gain clearances prior to completion of make-ready work – upon Zito’s acceptance and payment in full of the make-ready cost estimates.”⁹⁶

FCC rules do not obligate Penelec to permit Zito to attach temporarily, but Penelec agreed to do so voluntarily. Temporary attachments are an exception to normal pole attachment application processing and they require a lot of trust, since the attaching entity must be relied upon to attach without clearance violations and then to safely make those temporary attachments permanent.⁹⁷

Penelec agreed to the TAA and earlier extensions on the assumption that Zito would be paying their bills. When Zito refused to pay their bills, Penelec stopped agreeing to additional temporary attachments but told Zito it would continue to consider allowing Zito to install temporary attachments on a project-by-project basis, provided Zito pays its make-ready bills.⁹⁸

Requiring the pre-payment of invoiced make-ready costs (before construction and attachment) is permitted by FCC rules.⁹⁹ And Penelec’s approval of temporary attachments on a case-by-case basis is consistent with Penelec’s boxing and extension arm policy.¹⁰⁰

⁹⁵ *Id.* at 23-24, ¶¶ 61-63.

⁹⁶ *Id.* at 28, ¶ 76.

⁹⁷ *Chumrik Declaration* at ¶ 40.

⁹⁸ *August 1 and September 5 Emails from Stephen Schafer* (“We will consider allowing additional temporary attachments on a project-by-project basis, provided Zito has paid all make-ready invoices.”) *See also Chumrik Declaration* at ¶ 41.

⁹⁹ 47 C.F.R. Section 1.1420(e) triggers the obligation of pole owners to provide required notices to existing attachers “upon receipt of payment” of the make-ready estimate.

¹⁰⁰ *Chumrik Declaration* at ¶ 42. A link to FirstEnergy’s boxing and extension arm policy (which is followed by Penelec and all of FirstEnergy’s other operating utilities) is included with every SPANS application, and the attacher must accept that policy as part of its application. A copy of the SPANS application with the link to FirstEnergy’s boxing and extension arm policy is attached hereto at Attachment J. A copy of Penelec’s boxing and extension arm policy is attached hereto at Attachment K. As shown, Penelec’s policy is not to allow boxing or extension arms, but the policy states: “Approval for the use of boxing and extension arms shall be determined by FirstEnergy at its sole

Zito claims that Penelec's insistence that Zito pay its make-ready estimates to gain temporary access violates Penelec's duty to provide nondiscriminatory access, citing Section 1.1403(a) of the Commission's rules.¹⁰¹ Section 1.1403(a) of the Commission's rules requires utilities to provide nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

Penelec is applying its temporary attachment policy in a nondiscriminatory manner to Zito consistent with the FCC's rules pertaining to temporary attachments. Zito is not being discriminated against because Penelec does not grant temporary attachment rights (or access of any kind, for that matter) to any entity that refuses to pay its make-ready construction bills. In fact, as Zito well knows, TAAs are the exception for Penelec, not the norm.¹⁰²

Section 1.1403(a) also allows Penelec to refuse to provide access for reasons of safety, reliability and generally applicable engineering purposes. To the extent that Zito refuses to pay for make-ready construction, Zito is acting as an untrustworthy and unsafe pole attachment risk, which is particularly troublesome with respect to temporary attachments. For safety, reliability and engineering reasons, Penelec cannot grant temporary or any other access to its poles to untrustworthy and unsafe telecommunications companies.¹⁰³

discretion, on a case-by-case (i.e. pole-by-pole) basis." The policy explains boxing and extension arms create operational problems, and states: "[b]lanket approval shall not be granted to any attaching person, company or contractor." These limiting circumstances for permitting boxing and extension arms are "clear, objective, and applied equally to the utility and attaching entity," consistent with FCC rules. *In the Matter of Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240, 5338 at ¶221.

¹⁰¹ *Complaint* at 41, ¶ 106 ("Penelec's demand that Zito pay all make-ready estimate charges in full to gain temporary access to Penelec's poles where the Commission's timeframes for access to utility poles prescribed by Section 1.1420 have been exceeded constitutes a violation of Penelec's duty to provide non-discriminatory access to any pole it owns or controls, except in narrowly defined circumstances, which do not apply here. See 47 C.F. R. § 1.1403(a).").

¹⁰² *Chumrik Declaration* at ¶ 44.

¹⁰³ *Chumrik Declaration* at ¶ 45.

FCC rules do not allow Zito simply to refuse to pay for make-ready construction costs. The Commission instead requires attaching entities to pay such make-ready costs in compliance with the pole owner's application and make-ready process. As explained in the April 2014 Enforcement Bureau Order attached hereto at Attachment L:

Salsgiver claims that Penelec's proposed make-ready charges (1) failed to provide sufficient detail, and (2) would have required Salsgiver to "correct existing violations of previous attachers." Yet Salsgiver had the option of first paying Penelec's make-ready charges, under protest; filing a complaint with the Commission alleging that the charges violate section 224 of the Act; and, if successful, recovering those overcharges. Such a course would have obviated any alleged harm, and Salsgiver offers no explanation of why it could not have proceeded this way. Rather, Salsgiver, by its own admission, attached in violation of various communications and electrical standards. We cannot condone Salsgiver's decision simply to disregard Penelec's application/make-ready process.¹⁰⁴

In another ruling based on Pennsylvania events, the Commission explained again the proper course is for the attaching entity to pay the amount due and then seek refunds:

More fundamentally, Fibertech has failed to demonstrate that the actual or threatened termination of the Pole Attachment Agreement has caused or will cause Fibertech to suffer irreparable harm - a showing required under section 1.1403(d). Duquesne's February 7 Letter indicated that Fibertech could avoid termination of the Pole Attachment Agreement by paying the \$565,814 amount that Duquesne claims it is due. Although we understand that Fibertech contends that the \$565,814 constitutes an overcharge in violation of section 224, Fibertech fails to explain, in either the Stay Petition or the Complaint, how it would be irreparably harmed if it simply paid Duquesne the \$565,814 amount now, with the expectation that it would later recover this payment as a refund if it succeeds in proving the section 224 violations alleged in its Complaint.¹⁰⁵

¹⁰⁴ Attachment L, *Petition of Salsgiver Telecom, Inc. for Temporary Stay Pursuant to Section 1.1403(d) of the Federal Communications Commission Rules*, Letter Order at 3, EB-14-MD-005 (Apr. 4, 2014) (footnotes omitted).

¹⁰⁵ *Fiber Technologies Networks, L.L.C v. Duquesne Light Co.*, Order, 18 FCC Rcd 10628, 10632, ¶12 (2003) (footnotes omitted).

Zito claims that this is a denial of access matter, by stating that: “Penelec’s failure to provide access to its poles on either a permanent or temporary basis using the approved and previously employed bracketing construction technique within the prescribed timeframes and unless Penelec accepts and pays its contractor’s unsupported make-ready estimates in full constitutes an effective denial of access.”¹⁰⁶

Penelec disagrees that Zito’s Complaint qualifies as a denial of access complaint because Zito has been granted access.

K. Penelec Hired Sigma and Has Allowed the Installation of Temporary Attachments in Order to Address Make-Ready Deadlines

Zito notes Penelec has not met FCC make-ready deadlines and claims Penelec hired Sigma in response to Zito’s request for a list of approved contractors.¹⁰⁷ Zito claims, “By unilaterally hiring Sigma instead of providing Zito with a reasonably sufficient list of contractors that it authorizes to perform surveys or make-ready on its poles, Penelec deprived Zito of the opportunity to review and select a contractor itself, which self-help remedy is specifically prescribed by the Commission’s rules.”¹⁰⁸

Zito states that Zito requested from Penelec a list of approved contractors for pre-attachment inspection and engineering work on August 11 and 16, 2016, and that Penelec informed Zito it hired Sigma on August 19, 2016, just three days later.¹⁰⁹ Penelec, however, started the process of hiring Sigma on July 25, 2016, so Penelec’s hiring of Sigma was not in response to Zito’s August 11 and 16, 2016 requests. More importantly, after Penelec announced

¹⁰⁶ *Complaint* at 28, ¶ 78.

¹⁰⁷ *Id.* at 38, ¶ 98.

¹⁰⁸ *Id.* at 37-38, ¶ 97. For the 1748 Penelec poles to which Zito requested to attach in 2017, the field work has been performed on 71% of the poles and design work has been done on 65% of the poles. *Chumrik Declaration* at ¶ 46.

¹⁰⁹ *Id.* at 9-10, ¶¶ 20-21.

it had hired Sigma, Zito dropped its request for a list of approved contractors.¹¹⁰ Zito evidently was content to see how the process would go with Sigma rather than press any right it believed it had to hire a utility-approved contractor.

Zito earlier requested a list of utility-approved contractors in a demand letter dated November 19, 2015, attached hereto at Attachment M. Zito's Complaint does not mention this letter or attach a copy, but in it Zito's General Counsel stated Zito will "allow [Penelec] to comply with the FCC Pole Attachment Order by providing Zito with "your list of approved surveyors, engineering firms and contractors." The letter concluded: "If you fail to provide to us your list of approved surveyors, engineering firms and contractors, you are on notice that we may be using any of the following surveyors, design firms and contractors or other firms that have been approved by other Pennsylvania utilities," and thereafter identifies one surveyor, two design firms, and nine contractors.¹¹¹

Just one month after this November 19, 2015 demand letter, however, Zito's General Counsel executed the Temporary Attachment Agreement ("TAA") on December 21, 2015.¹¹² Evidently, The TAA satisfied Zito's demand for a list of Penelec-approved contractors, since Zito did not follow through on its threat to hire its own contractors. As it was when Penelec hired Sigma, Zito evidently was content for some period to see how the temporary attachment process would go rather than press any right it believed it had to hire its own contractor.

In neither of these cases did Penelec "deprive" Zito of any self-help remedy Zito believed it might have had. Instead, the sequence of events demonstrates both Zito and Penelec agreed to other means to address the Commission's make-ready deadlines.

¹¹⁰ *Chumrik Declaration* at ¶ 47.

¹¹¹ Attachment M, Letter from Colin Higgin, Vice President and General Counsel, Zito Media, L.P., to John Forbes, Penelec (Nov. 19, 2015) at 2.

¹¹² *See Complaint* at Attachment B, Ex. 2.

L. Zito is not Qualified to Select Penelec's Contractors

Zito faults Penelec for not allowing Zito to participate in the selection of Penelec's contractor Sigma and for not allowing Zito to provide input into the terms and conditions governing the scope or price of the contractor's work.¹¹³

Actually, Penelec has experienced several years of Zito providing input into the terms and conditions governing the scope and price of its contractor's work. But Zito's arguments have not persuaded Penelec that Penelec's process or its agreement with Sigma should be changed. Instead, Penelec remains committed to this process, which resembles the processes of many other electric utilities.¹¹⁴ Penelec and these other utilities recognize these processes are necessary to ensure a safe and reliable electric distribution system or to facilitate a seamless and fault-free attachment process.¹¹⁵

Zito is not positioned to make decisions about make-ready engineering and construction contractors, particularly those performing work in the electric space. Zito does not understand electric space design, and its corporate objectives are different from Penelec's. And while Zito contends that "Zito has a vested interest in the safety and integrity of the poles to which it attaches,"¹¹⁶ Zito's vested interest is not that great, as evidenced by its faulty Pole Profile Sheets and the safety issues they create, and the Forlina injury complaint. Zito's interest is also not nearly as great as the vested interest of Penelec, the electric utility pole owner which is

¹¹³ *Id.* at 10, ¶ 22.

¹¹⁴ See Declaration of Brenda Brockman (Dayton Power and Light Company); Declaration of Samantha Cook (Baltimore Gas and Electric); Declaration of Jodi Corrow (Minnesota Power); Declaration of Diana Gaiser (PECO); Declaration of Leila Hussein (Alliant Energy); Declaration of Carol Vallejo (Kansas City Power and Light), included at Attachment E. See also *PPL Response* at 13.

¹¹⁵ *Chumrik Declaration* at ¶ 48.

¹¹⁶ *Complaint* at 14-15, ¶ 34.

ultimately responsible for ensuring the safety and integrity of an electric distribution system that by its nature is potentially hazardous.¹¹⁷

Zito claims that the personnel deployed by Sigma to conduct the pre-attachment survey are not qualified.¹¹⁸ But this conclusion appears to be based solely on Zito's conclusion that Sigma's survey technician was too inexperienced to discuss potential make-ready work in the field.¹¹⁹ Sigma's technician in the field, however, was employed simply to collect data, and Zito has not alleged much less demonstrated that Sigma's technician made any mistakes.¹²⁰ And as explained above, Penelec offered to have a Sigma engineer fully qualified to discuss potential make-ready work perform joint ride-outs with Zito for \$88 per hour but Zito refused unless Penelec would guarantee on-the-fly decisions without performing any necessary subsequent engineering analysis.

M. Penelec Cannot Verify Whether Zito Has Federal Pole Attachment Rights

At paragraph 6 of its Complaint, Zito alleges that it provides a number of services, largely in "unserved" or "underserved" areas, and that its services have had a beneficial impact.¹²¹ Penelec cannot verify any of these statements and notes simply that Zito has not provided any service map or other evidence to support these claims. More significantly, Penelec is unable without more information to verify whether Zito has federal pole attachment rights on the Penelec poles to which it seeks to attach, since those rights depend on whether Zito is providing any cable or telecommunications service over those Penelec facilities.¹²² Without the

¹¹⁷ *Chumrik Declaration* at ¶ 50.

¹¹⁸ *Complaint* at 38-39, ¶ 99.

¹¹⁹ *Id.* at 14, ¶ 33.

¹²⁰ *See Chumrik Declaration* at ¶ 13.

¹²¹ *Complaint* at 6, ¶ 6.

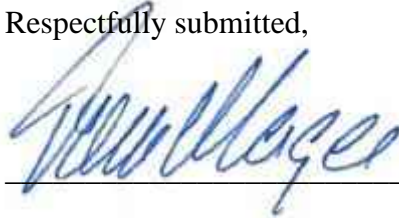
¹²² To the extent Zito is providing only dark fiber, for example, Zito would not have federal pole attachment rights on Zito's poles.

opportunity to determine how Zito is using Penelec's facilities, Penelec cannot agree on the extent to which, if at all, Zito has federal pole attachment rights to seek FCC resolution of this matter.¹²³

III. CONCLUSION

WHEREFORE, for the foregoing reasons, Penelec respectfully requests that the Commission dismiss, or otherwise deny, Zito's Complaint.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Thomas B. Magee", is written over a horizontal line.

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Attorneys for Pennsylvania Electric Company

December 13, 2017

¹²³ Penelec also questions Zito's claim that it needs Penelec's poles to provide service, since Zito has provided no evidence of the extent to which it cannot construct its facilities underground. *Complaint* at 7, ¶ 12.

CERTIFICATE OF SERVICE

I, Timothy A. Doughty, hereby certify that on this 13th day of December 2017, a true and authorized copy of this Response to Pole Attachment Complaint was served on the parties listed below via electronic mail, unless noted otherwise, and was filed with the Commission via ECFS.

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(By Overnight Delivery Only)

/s/
Timothy A. Doughty

ATTACHMENT A

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

ZITO MEDIA, L.P.,

Complainant,

v.

**PENNSYLVANIA ELECTRIC
COMPANY**

Respondent.

**Proceeding No. 17-316
File No. EB-17-MD-006**

I, Robert Chumrik, declare as follows:

1. My name is Robert Chumrik. I am an Engineer V with responsibilities for joint use at Pennsylvania Electric Company ("Penelec"). I am a Professional Engineer licensed in the Commonwealth of Pennsylvania.
2. Penelec has worked hard to accommodate Zito attachment requests in an environment where poles are becoming more crowded and attachment requests more numerous. Like other utilities, to comply in an effective manner with FCC make-ready deadlines, Penelec has developed a safe and efficient process for accommodating new attachment requests, by hiring an outside contractor Sigma Technologies ("Sigma").
3. To my knowledge, Penelec has never received a certified letter from Zito Media, L.P. ("Zito") outlining the allegations that form the basis of the complaint Zito anticipated filing and offering to hold executive-level discussions regarding the dispute

4. After learning Zito was struggling to devote sufficient resources to comply with this process, Penelec made it easier by providing Zito a list of typical high-cost pole conditions that Zito may wish to look for and seek to avoid.
5. Zito could accompany Penelec's contractor Sigma when Sigma's technician inspects the poles, or pay the additional cost for Sigma to assign a Professional Engineer qualified to render opinions during a joint ride-out. On that survey, Zito could take its own measurements, provide any information Zito believes is relevant, propose any alternative attachment practice Zito may believe is suitable, propose any solution Zito believes is warranted, and identify any pre-existing safety violation Zito believes another attacher should fix.
6. To save time and money, nothing prohibits Zito from hiring its own contractor familiar with the National Electrical Safety Code ("NESC") to decide which routes to select in the first instance.
7. By performing this due diligence, Zito could easily identify pole routes that are congested or otherwise likely to be more expensive than others, and Zito could easily avoid any delay caused by Penelec by choosing an alternate, less expensive route in the first place.
8. An alternate route could include different streets, going underground for a single pole or set of poles, leasing dark fiber, or overloading another attacher's facilities. The "street route" might or might not remain the same.
9. If Zito were taking the time to evaluate in advance its proposed routes or to participate in joint ride outs, Zito could determine which make-ready work is reasonable under the circumstances, whether it should proceed with the work or re-route its facilities, or whether there might be solutions that are more efficient and/or cost-effective while still ensuring the safety and integrity of the pole and all of its attachments consistent with Penelec's standards.
10. If Zito were fully complying with its opportunities to be part of the pre-attachment inspection process, Zito could identify any pole that clearly needs to be replaced, thus avoiding a pole loading study on that pole.
11. If Zito were more engaged in the pre-attachment inspection process, Zito could identify for itself pre-existing safety violations.
12. An example of a Pole Profile Sheet completed by Zito is attached hereto at Exhibit 1. As shown, the Pole Profile Sheet requires Zito to identify pole heights, attachment heights, and guying requirements. It enables Zito to recommend make-ready work to be performed, and provides a space for Zito provide notes of anything more that Zito would like Penelec to consider.

13. After Zito requested a joint ride-out, Penelec discussed with Zito what the process would be and explained to Zito that the technician collecting measurements in the field was there to collect measurements and was not qualified to make decisions about make-ready work to be performed.
14. Following the ride-out during which Zito found out for itself that the technician collecting measurements in the field was there to collect measurements and was not qualified to make decisions about make-ready work to be performed, Penelec offered to have a Sigma engineer (not a “technician supervisor”) accompany Zito for the expense of \$88 per hour.
15. As a result, if Zito wanted to accompany Sigma to identify pre-existing violations, Zito could do that. If Zito wanted to accompany Sigma to tell Sigma not to do an engineering analysis on a certain pole because Zito decides to go underground instead, then Sigma would remove the pole from the application so as to avoid any unnecessary analysis. If Zito wanted to accompany Sigma to verify Sigma’s measurements, Zito could do that. If Sigma later were to recommend make-ready construction work that Zito disputes is unnecessary, Zito’s participation in the joint ride-out would provide Zito with information necessary to meaningfully question such recommendations.
16. Sigma was brought in to work on projects for other companies north of I-80 besides Zito. Zito’s large jobs are almost all in the north, and are nearly equal to the total number of poles requested from all other attachers combined. Penelec intends to transition to using Sigma for all attachers both north and south of I-80 in order to uniformly meet make-ready deadlines, but needed to start somewhere.
17. I do not understand what Zito is referring to in its statement that “Based upon Penelec’s make-ready cost estimates, it appears that Penelec is requiring Zito to pay to correct pre-existing non-compliance, including for pole replacements, that are unrelated to Zito’s proposed attachment.”
18. The Pole Profile Sheets Zito provides by themselves do not contain all of the information necessary to perform an engineering design. They do not show laterals going down the side, do not show service drops, do not show mid-span measurements, and do not show tensions. Zito’s Pole Profile Sheet also does not include any loading analysis, and does not constitute engineering design or the preparation of a make-ready construction estimate, all of which Sigma includes in its professional, accurate and reliable pre-attachment survey and design process.
19. Penelec requested support from Zito during discussions this spring for Zito’s unsubstantiated claims that Penelec’s charges were “excessive” when compared to other pole owners, but Zito never provided it.

20. Penelec's pre-attachment survey and engineering process is as follows. Penelec's contractor Sigma performs make-ready survey and engineering design work for new attachment requests. During pole surveys, Sigma collects the following information for each pole: the identity of pole attachers; the location and height of attachments on each pole; the class of the pole; measurements of midspan clearances; measurements of the length and direction of all cables, road crossings, railroad crossings, anchoring, risers, and grounds; and several photographs of each pole. This information is then put into Penelec's work order management system to support engineering design for Zito's requested attachments. Following each pole survey, Sigma performs a pole loading study, not for each surveyed pole, but for representative worst-case poles in a line of poles, using Line Design Engineering. Sigma then creates a make-ready design and make-ready cost estimate, which consists of all incurred costs attributable to the attachment request being passed through to the attachers.
21. Penelec is striving to comply with FCC make-ready deadlines in an environment where poles have become more and more congested and attachment requests have multiplied. Zito, for example, has submitted approximately 190 applications to attach to more than 4200 Penelec poles since February 2016.
22. To assist in complying with the deadlines associated with Zito's considerable number of attachment requests and to ensure Penelec's standards and codes are met in an efficient manner, Penelec hired Sigma. Sigma has improved the consistency, accuracy and speed of data collection, rendering the make-ready design process more efficient and reliable.
23. Since Penelec hired Sigma in August 2016, Penelec has not marked up any of the costs that Sigma charges, but instead simply passes them through as a cost for the incremental services rendered to support attacher requests to affix facilities to Penelec's poles. Sigma has been performing the same pre-attachment inspection and engineering work for several other Penelec attachers since Sigma was hired in August 2016, and Sigma has worked successfully with these other companies since that time. Only Zito has complained.
24. Like many other utilities, Penelec performs a loading analysis on certain poles to which Zito and other attachers seek to attach. A pole loading study takes into account numerous factors necessary to determine whether a pole meets NESC strength and loading requirements based on the construction grade of the line and environmental loading district for the pole.
25. The NESC requires an analysis of NESC compliance whenever new attachments are added but not otherwise. The code requires that an existing structure must meet code requirements "where conductors or equipment is added, altered, or replaced on an existing structure" (NESC Rule 013B3). Conversely, "[e]xisting installations, including

maintenance replacements, that currently comply with prior editions of the Code, need not be modified to comply” with the new code (NESC Rule 013B2).

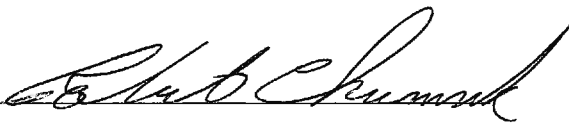
26. To my knowledge, Osmose’s LoadCalc application is intended for use as part of a pole inspection and maintenance program for existing poles subject to inspection with no proposed construction. It determines which poles in their current condition are candidates for reinforcement or replacement. It is not an engineering analysis designed for construction additions to those poles, such as new communications attachments. It would not be prudent to make decisions on the safety of a structure based on “estimates” or “potential” results. Instead, an engineering analysis based on accurate measurements and calculations is warranted for new attachment requests. This is why many utilities perform pole loading studies on every pole to which attachment is sought.
27. While abandoning pre-proposal due diligence is not considered by Penelec to be a preferred practice, it exemplifies Penelec’s efforts to provide choices to Zito within the parameters of Penelec’s own due diligence obligations.
28. None of the information gathered by Sigma for Zito or for any other attacher is used for the pole inspections required by the Pennsylvania Public Utility Commission (“PaPUC”). The data Penelec gathers during this state-required inspection is gathered systematically on a 10-year inspection cycle, not randomly like pole attachment requests. The reason none of attachment request information is used is that the process of organizing this attachment request data and coordinating such data with Penelec’s state inspection process would be unsystematic, confusing and difficult, and cost more money than anything Penelec might save.
29. As for “company betterment,” in the course of surveying the poles in Zito’s application, Penelec instructs Sigma to note any Penelec equipment that is out of compliance with current standards. One example is when an old porcelain-type piece of equipment must be replaced with polyurethane-type material. Another is when a transformer is too small or is overloaded. In such cases, Sigma’s design will include replacing the equipment. However, if any of this work generates more than an insubstantial, incidental cost, the cost for that work is removed from Sigma’s engineering survey charge. Zito is therefore not charged for any of this “company betterment.”
30. Apart from company betterment activity for which Zito is not charged, none of the information gathered by Sigma benefits Penelec. While the data gathered about attachment heights, pole loading, tensions, mid-span clearances and other information that Sigma collects is put into Penelec’s work order management system to support engineering design for Zito’s requested attachments, none of it except for the name of the new attacher is put into any permanent Penelec database. And the only reason this information is gathered is to accommodate Zito’s attachment requests

31. The only benefit to other attachers of Penelec's safe and efficient survey and engineering process is that existing and future attachers get to attach to safe and reliable infrastructure.
32. It appears Zito already understands the pre-attachment inspection and engineering work that is performed on each pole, and understands the make-ready construction work to be performed on each pole. Zito certainly understands enough already to drop poles from its applications, because it does so frequently. And Zito could easily gather whatever additional information it might need prior to submitting its applications, using the Pole Profile Sheet process. Zito could also accompany Sigma on joint ride outs to determine for itself the information Sigma collects for each pole and how the design process works.
33. Penelec routinely raises or lowers existing attachments, guys poles to balance the load, and replaces poles where necessary.
34. Both boxing and extension arms make it more difficult and potentially hazardous for climbers to access the pole.
35. Boxing results in two sides of a pole having wire attachments, which obstructs the climbing space. Extension arms extend beyond the vertical space on the pole thus creating a climbing hazard and even raising the possibility that someone falling from a pole could get caught on that extension arm on the way down. These climbing obstructions are more problematic during storm restoration work when it is more likely that poles will be climbed.
36. Boxing also makes it more difficult to change-out (*i.e.*, replace) poles. Replacing the pole and transferring the attachments is relatively easy if the attachments are located on only one side of a pole, since the new pole can easily be installed next to the one to be replaced. With boxing, however, the new pole must be inserted between the wires on both sides of the existing pole. This procedure is more costly and time consuming, creates safety hazards and risks damaging the communications facilities that are currently attached.
37. Extension arms cause pole loading concerns. The cantilever effect of extension arms projecting out from the pole results in an extraordinary amount of weight and load being concentrated in a specific area.
38. Extension arms may be used only to achieve horizontal clearances, and do not remedy vertical clearance violations.
39. Penelec voluntarily agreed to permit Zito to attach temporarily.

40. Temporary attachments are an exception to normal pole attachment application processing and they require a lot of trust, since the attaching entity must be relied upon to attach without clearance violations and then to safely make those temporary attachments permanent.
41. Penelec agreed to the temporary attachment agreement and earlier extensions on the assumption that Zito would be paying their bills. When Zito refused to pay their bills, Penelec stopped agreeing to additional temporary attachments but told Zito it would continue to consider allowing Zito to install temporary attachments on a project-by-project basis, provided Zito pays its make-ready bills.
42. Penelec's approval of temporary attachments on a case-by-case basis is consistent with Penelec's boxing and extension arm policy.
43. Penelec does not grant temporary attachment rights (or access of any kind, for that matter) to any entity that refuses to pay its make-ready construction bills.
44. Temporary attachment agreements are the exception for Penelec, not the norm.
45. For safety, reliability and engineering reasons, Penelec cannot grant temporary or any other access to its poles to untrustworthy and unsafe telecommunications companies.
46. For the 1748 Penelec poles to which Zito requested to attach in 2017, the field work has been performed on 71% of the poles and design work has been done on 65% of the poles.
47. Penelec started the process of hiring Sigma on July 25, 2016, so Penelec's hiring of Sigma was not in response to Zito's August 11 and 16, 2016 requests. After Penelec announced it had hired Sigma, Zito dropped its request for a list of approved contractors.
48. Penelec has experienced several years of Zito providing input into the terms and conditions governing the scope and price of its contractor's work. But Zito's arguments have not persuaded Penelec that Penelec's process or its agreement with Sigma should be changed. Instead, Penelec remains committed to this process, which resembles the processes of many other electric utilities. These processes are necessary to ensure a safe and reliable electric distribution system or to facilitate a seamless and fault-free attachment process.
49. Zito is not positioned to make decisions about make-ready engineering and construction contractors, particularly those performing work in the electric space. Zito does not understand electric space design, and its corporate objectives are different from Penelec's.

50. Zito's interest in safety is not nearly as great as the vested interest of Penelec, since Penelec is the electric utility pole owner which is ultimately responsible for ensuring the safety and integrity of an electric distribution system that by its nature is potentially hazardous.

I declare under penalty of perjury that the foregoing is true and correct.

By: 

Robert Chumrik
Engineer V
Penelec

Dated: December 13, 2017

EXHIBIT 1

PROFILE SHEET
Pole Attachment Data
FORM NW030805

FirstEnergy

POWER COMPANY POLE NO. DC-705		TELEPHONE COMPANY POLE NO.	
STREET LOCATION Carbon Mine Rd		NAME OF ATTACHER Zito Media, L.P.	
CITY / BORO / TOWNSHIP Lawrence Twp		DATE 7-1-15	FIELD PERSONNEL NAME SSP
ATTACHMENT TYPE <input checked="" type="checkbox"/> FOC <input type="checkbox"/> Guy Pole <input checked="" type="checkbox"/> Anchor Guy <input type="checkbox"/> Other (Explain in NOTES)*			
POLE CLASS & SIZE NA-NA	TRANSFORMER / DEVICE ON POLE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	STREET LIGHT <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT
GUYING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		CONDUIT RISER <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No; If Yes → <input type="checkbox"/> Primary <input type="checkbox"/> Secondary	
ANCHORS & GUYS	<input type="checkbox"/> 1st Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Pole to Pole Guy (Pole No.) _____		
	<input type="checkbox"/> 2nd Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Sidewalk Guy <input type="checkbox"/> Brace Pole <input type="checkbox"/> Slack Span		
POLE DRAWING	POLE NO. →		BEFORE DC-706 AFTER DC-704
	* TYPE OF POWER ATTACHMENT →		<input checked="" type="checkbox"/> Neutral - ? <input type="checkbox"/> Secondary <input type="checkbox"/> Other (Explain in NOTES) **
	Pri @ 25'11" DE / side <div style="display: flex; align-items: center;"> <div style="flex: 1;"> <p>Company Name</p> <p>1. <u>Zito Media</u></p> <p>2. <u>ACC</u></p> <p>3. <u>TV</u></p> <p>4. _____</p> <p>5. _____</p> <p>6. _____</p> </div> <div style="flex: 2; border-left: 1px solid black; padding-left: 10px;"> <p style="text-align: center;">Pole Side</p> <div style="display: flex; justify-content: space-between;"> <div> <p>Lowest Power Attachment</p> <p><input type="checkbox"/> Front <input type="checkbox"/> Back</p> </div> <div style="text-align: center;"> </div> <div> <p>Attach. Ht. 20'11"</p> <p>Proposed Attach. Ht. 18'11"</p> <p>Attach. Ht. 18'5"</p> <p>Attach. Ht. 17'10"</p> <p>Attach. Ht. _____</p> <p>Attach. Ht. _____</p> <p>Attach. Ht. _____</p> </div> </div> </div> </div>		
	<p>SPAN CROSSES OVER (Check all that apply)</p> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"><input type="checkbox"/> Body of Water</div> <div style="width: 50%;"><input type="checkbox"/> Street</div> <div style="width: 50%;"><input type="checkbox"/> Driveway</div> <div style="width: 50%;"><input checked="" type="checkbox"/> Field</div> <div style="width: 50%;"><input type="checkbox"/> Turnpike / Interstate</div> <div style="width: 50%;"><input type="checkbox"/> Swimming Pool</div> <div style="width: 50%;"><input type="checkbox"/> Building</div> <div style="width: 50%;"><input type="checkbox"/> Railroad</div> <div style="width: 50%;"><input type="checkbox"/> Yard</div> <div style="width: 50%;"><input type="checkbox"/> Parking Lot</div> </div>		
	NOTES		
	MAKE READY RECOMMENDATIONS		
	Raise DE Next-6"		

ATTACHMENT B

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

ZITO MEDIA, L.P.,

Complainant,

v.

**PENNSYLVANIA ELECTRIC
COMPANY**

Respondent.

**Proceeding No. 17-316
File No. EB-17-MD-006**

I, Keith A. Gardner, declare as follows:

1. My name is Keith A. Gardner. I am a Distribution Tech IV at Pennsylvania Electric Company ("Penelec").
2. I have performed survey and engineering design work on pole attachment applications submitted to Penelec by Zito Media, L.P. ("Zito").
3. There have been very few times that Zito has not modified its application after Penelec performs survey and design work and then submits to Zito the estimated costs for the project.
4. For example, on November 17, 2015, after Penelec performed the field survey and engineering design work associated with several Zito applications, Zito canceled 40 of 45 poles on one application, 21 of 44 poles on another, 33 of 33 poles on another, 45 of 45 poles on another, 15 of 46 poles on another, and 44 of 45 poles on another.
5. This practice has actually increased since 2015, with Zito modifying or outright canceling additional applications following Penelec survey and design work.

6. For all of these instances, Penelec essentially has provided to Zito a feasibility study for Zito's proposed fiber line.
7. Zito has routinely foisted its due diligence obligation onto Penelec, and has been depending on Penelec's survey work and design expertise to determine whether the route Zito selected for pole attachments is the least-costly alternative that Zito itself could easily have identified in their up-front route selection.
8. Zito had requested attachment to pole DC-705(21) in 2015.
9. The Pole Profile Sheet Zito submitted for that pole is attached hereto at Exhibit 1.
10. In November 2017, I field-checked pole DC-705(21) and completed a new profile sheet, which is attached hereto as Exhibit 2.
11. I verified that the Pole Profile Sheet submitted by Zito includes several Zito measurements that were off by four to six inches.
12. Zito itself identified on the sheet that make-ready work was necessary in order to avoid attaching in violation of the National Electrical Safety Code's ("NESC's") "communications worker safety zone" that separates communications attachments from energized conductors.
13. Zito's Profile Sheet proposed that Zito's attachment be installed in violation of the NESC communication worker safety zone.
14. Zito has a permanent attachment on this pole only 23 inches from Penelec's deadend neutral and in Penelec's electric space. This is a violation of the NESC's communications worker safety zone.
15. Photographs of this pole are attached hereto at Exhibit 3.
16. It is my understanding that Zito has other options to lease dark fiber from, or overlash, existing attachers, or to go underground to avoid high make-ready costs.

I declare under penalty of perjury that the foregoing is true and correct.

By:



Keith A. Gardner
Distribution Tech IV
Penelec

Dated: December 13, 2017

EXHIBIT 1

PROFILE SHEET
Pole Attachment Data
FORM NW030805

FirstEnergy

POWER COMPANY POLE NO. DC-705		TELEPHONE COMPANY POLE NO.	
STREET LOCATION Carbon Mine Rd		NAME OF ATTACHER Zito Media, L.P.	
CITY / BORO / TOWNSHIP Lawrence Twp		DATE 7-1-15	FIELD PERSONNEL NAME SSP
ATTACHMENT TYPE <input checked="" type="checkbox"/> FOC <input type="checkbox"/> Guy Pole <input checked="" type="checkbox"/> Anchor Guy <input type="checkbox"/> Other (Explain in NOTES)*			
POLE CLASS & SIZE NA-NA	TRANSFORMER / DEVICE ON POLE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	STREET LIGHT <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT
GUYING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		CONDUIT RISER <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No; If Yes → <input type="checkbox"/> Primary <input type="checkbox"/> Secondary	
ANCHORS & GUYS	<input type="checkbox"/> 1st Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Pole to Pole Guy (Pole No.) _____		
	<input type="checkbox"/> 2nd Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Sidewalk Guy <input type="checkbox"/> Brace Pole <input type="checkbox"/> Slack Span		
POLE DRAWING	POLE NO. →		BEFORE DC-706 AFTER DC-704
	* TYPE OF POWER ATTACHMENT →		<input checked="" type="checkbox"/> Neutral - ? <input type="checkbox"/> Secondary <input type="checkbox"/> Other (Explain in NOTES) **
	Pri @ 25'11" DE / side <div style="display: flex; align-items: center;"> <div style="flex: 1;"> <p>Company Name</p> <p>1. Zito Media</p> <p>2. ACC</p> <p>3. TV</p> <p>4. _____</p> <p>5. _____</p> <p>6. _____</p> </div> <div style="flex: 2; border-left: 1px solid black; padding-left: 10px;"> <p style="text-align: center;">Pole Side</p> <div style="display: flex; justify-content: space-between;"> <div> <p>Lowest Power Attachment</p> <p><input type="checkbox"/> Front <input type="checkbox"/> Back</p> </div> <div> <p>Attach. Ht. 20'11"</p> </div> </div> <div style="display: flex; justify-content: space-between;"> <div> <p><input type="checkbox"/> Front <input checked="" type="checkbox"/> Back</p> </div> <div> <p>Proposed Attach. Ht. 18'11"</p> </div> </div> <div style="display: flex; justify-content: space-between;"> <div> <p><input checked="" type="checkbox"/> Front <input type="checkbox"/> Back</p> </div> <div> <p>Attach. Ht. 18'5"</p> </div> </div> <div style="display: flex; justify-content: space-between;"> <div> <p><input type="checkbox"/> Front <input checked="" type="checkbox"/> Back</p> </div> <div> <p>Attach. Ht. 17'10"</p> </div> </div> <div style="display: flex; justify-content: space-between;"> <div> <p><input type="checkbox"/> Front <input type="checkbox"/> Back</p> </div> <div> <p>Attach. Ht. _____</p> </div> </div> <div style="display: flex; justify-content: space-between;"> <div> <p><input type="checkbox"/> Front <input type="checkbox"/> Back</p> </div> <div> <p>Attach. Ht. _____</p> </div> </div> <div style="display: flex; justify-content: space-between;"> <div> <p><input type="checkbox"/> Front <input type="checkbox"/> Back</p> </div> <div> <p>Attach. Ht. _____</p> </div> </div> </div> <div style="text-align: right; margin-top: 10px;"> <p>Ground Line</p> </div> </div>		
	SPAN CROSSES OVER (Check all that apply)		
	<input type="checkbox"/> Body of Water <input type="checkbox"/> Street <input type="checkbox"/> Driveway <input checked="" type="checkbox"/> Field <input type="checkbox"/> Turnpike / Interstate <input type="checkbox"/> Swimming Pool <input type="checkbox"/> Building <input type="checkbox"/> Railroad <input type="checkbox"/> Yard <input type="checkbox"/> Parking Lot		
	NOTES		
	MAKE READY RECOMMENDATIONS		
	Raise DE Next-6"		

EXHIBIT 2

PROFILE SHEET
Pole Attachment Data
 FORM NW030805

FirstEnergy

POWER COMPANY POLE NO DC-705		TELEPHONE COMPANY POLE NO N/A	
STREET LOCATION CARBON MINE RD		NAME OF ATTACHER	
CITY / BORO / TOWNSHIP CLEARFIELD - LAWRENCE TWP		DATE 11/8/17	FIELD PERSONNEL NAME K. GARDNER-PENELEC
ATTACHMENT TYPE <input type="checkbox"/> FOC <input type="checkbox"/> Guy Pole <input checked="" type="checkbox"/> Anchor Guy <input type="checkbox"/> Other (Explain in NOTES) *			
POLE CLASS & SIZE	TRANSFORMER / DEVICE ON POLE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	STREET LIGHT <input type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT TOP OF CONDUIT RISER HEIGHT
GUYING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION <input type="checkbox"/> Yes <input type="checkbox"/> No		CONDUIT RISER <input type="checkbox"/> Yes <input type="checkbox"/> No; If Yes → <input type="checkbox"/> Primary <input type="checkbox"/> Secondary	
ANCHORS & GUYS	<input checked="" type="checkbox"/> 1st Down Guy, Size TRIPLE EYE Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Pole to Pole Guy (Pole No.) _____		<input checked="" type="checkbox"/> 2nd Down Guy, Size TRIPLE EYE Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Sidewalk Guy <input type="checkbox"/> Brace Pole <input type="checkbox"/> Slack Span
POLE DRAWING	POLE NO. → DC-706		AFTER DC-704
	* TYPE OF POWER ATTACHMENT → <input type="checkbox"/> Neutral <input type="checkbox"/> Secondary <input type="checkbox"/> Other (Explain in NOTES) **		
	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>UNDERBUILT NEUTRAL DE @ 21'4"</p> <p>Company Name</p> <p>1. ZITO MEDIA</p> <p>2. ZAYO</p> <p>3. CATV</p> <p>4. _____</p> <p>5. _____</p> <p>6. _____</p> </div> <div style="width: 50%;"> <p style="text-align: center;">Pole Side</p> <p>Lowest Power Attachment</p> <div style="display: flex; align-items: center;"> <input type="checkbox"/> Front <input type="checkbox"/> Back </div> <p>SIDE - DE</p> <div style="display: flex; align-items: center;"> <input type="checkbox"/> Front <input type="checkbox"/> Back </div> <div style="display: flex; align-items: center;"> <input type="checkbox"/> Front <input checked="" type="checkbox"/> Back </div> <div style="display: flex; align-items: center;"> <input checked="" type="checkbox"/> Front <input type="checkbox"/> Back </div> <div style="display: flex; align-items: center;"> <input type="checkbox"/> Front <input type="checkbox"/> Back </div> <div style="display: flex; align-items: center;"> <input type="checkbox"/> Front <input type="checkbox"/> Back </div> <div style="display: flex; align-items: center;"> <input type="checkbox"/> Front <input type="checkbox"/> Back </div> </div> </div>		
	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>STATIC NEUT @ POLE TOP</p> <p>PRIMARY DE ON CROSS ARM @ 26'6"</p> <p>Proposed Attach. Ht. 19'5"</p> <p>Attach. Ht. 18'8" (BOLT)</p> <p>Attach. Ht. 18'2" (BOLT)</p> <p>Attach. Ht. _____</p> <p>Attach. Ht. _____</p> <p>Attach. Ht. _____</p> </div> <div style="width: 50%;"> <p>Attach. Ht. _____</p> <p>Attach. Ht. _____</p> <p>Attach. Ht. _____</p> <p>Attach. Ht. _____</p> <p>Attach. Ht. _____</p> <p>Attach. Ht. _____</p> </div> </div>		
	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>..... Ground Line</p> </div> <div style="width: 50%;"> <p>..... Ground Line</p> </div> </div>		
	<p>SPAN CROSSES OVER (Check all that apply)</p> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"><input type="checkbox"/> Body of Water</div> <div style="width: 33%;"><input type="checkbox"/> Street</div> <div style="width: 33%;"><input type="checkbox"/> Driveway</div> <div style="width: 33%;"><input checked="" type="checkbox"/> Field</div> <div style="width: 33%;"><input type="checkbox"/> Turnpike / Interstate</div> <div style="width: 33%;"><input type="checkbox"/> Swimming Pool</div> <div style="width: 33%;"><input type="checkbox"/> Building</div> <div style="width: 33%;"><input type="checkbox"/> Railroad</div> <div style="width: 33%;"><input type="checkbox"/> Yard</div> <div style="width: 33%;"><input type="checkbox"/> Parking Lot</div> </div>		
	NOTES		
	MAKE READY RECOMMENDATIONS		
	<p>NEUTRAL CHANGES FROM UNDERBUILT TO STATIC NEUTRAL</p> <p>ZITO WAS TO ATTACH 6" ABOVE ZAYO ON FRONT - ATTACHED @ 7" AND 23" FROM NEUTRAL</p>		

NO COMM DOWN GUYS - 7° ANGLE ON THROUGH LINES

EXHIBIT 3







ATTACHMENT C

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

ZITO MEDIA, L.P.,

Complainant,

v.

**PENNSYLVANIA ELECTRIC
COMPANY**

Respondent.

**Proceeding No. 17-316
File No. EB-17-MD-006**

I, Ryan J. Hetrick, declare as follows:

1. My name is Ryan J. Hetrick. I am the President of Sigma Technologies, LTD ("Sigma"). I make this declaration in support of Pennsylvania Electric Company's ("Penelec") Response to the Pole Attachment Complaint in the above-captioned proceeding.
2. Sigma is a design consulting firm currently under contract with Penelec to perform make-ready design work.
3. During pole design field data collection (survey here-in), Sigma collects the following information for each pole: the identity of pole attachers; the location and height of attachments on each pole; the class of the pole; measurements of mid-span clearances; and measurements of the length and direction of all cables, road crossings, railroad crossings, anchoring, and risers.
4. The information identified in paragraph 3 is needed to assess the safety impacts of the proposed addition of infrastructure and meeting the NESC and FirstEnergy safety standards.

5. We like to capture a minimum of three photos per pole to afford our designers a better illustration of the reality as found in the field by our field data collection associates. The photographs give the designers a beneficial perspective that numeric measurement cannot which facilitates pragmatic and safer designs to accommodate the attachers' proposal.
6. Sigma does not complete a pole loading study on every pole. Instead, we generally perform a pole loading study on one worst case scenario pole in each proposal and continue with additional pole analysis until a pole state which passed loading evaluation was identified and therefore no further loading analysis was required to assess the safety of the additional proposed attachments.
7. Sigma doesn't collect GPS coordinates during the survey process. GPS coordinates are identified in the web-based application system SPANS (Spatially-enabled Permitting and Notification System) used by Penelec.
8. On June 18, 2016 Zito submitted an attachment request proposal to Penelec to attach to 54 of its poles using SPANS.
9. Sigma analyzed the 54 Pole Profile Sheets associated with Zito's proposal and found that nine of them contained deficient information, indicating Zito did not properly perform its due diligence and was relying on Sigma to perform the full survey and design work on those poles. Specific examples of the deficient information provided by Zito in this attachment request are identified in Paragraphs 10-18, and the Pole Profile Sheets associated with those poles are attached hereto as Exhibit 1.
10. On Pole 3, Zito failed to provide the height at which it sought to attach and stated that an "Engineering Check" was required for make-ready. "Engineering Check" has no specific meaning in the context of make-ready work. After completing survey and design work, Sigma recommended that the pole be replaced to safely accommodate the requested attachment. The information provided by Zito for this pole is deficient and demonstrates that Zito did not properly perform its due diligence and instead relied on Sigma to perform the survey and design work for this pole.
11. On Pole 8, Zito failed to provide the height at which it sought to attach and stated that an "Engineering Check" was required for make-ready. "Engineering Check" has no specific meaning in the context of make-ready work. After completing survey and design work, Sigma recommended that the secondary portion of the pole should be re-sagged to safely accommodate the attachment. The information provided by Zito is deficient and demonstrates that Zito did not properly perform its due diligence and instead relied on Sigma to perform the survey and design work for this pole.
12. On Pole 13, Zito failed to provide the height at which it sought to attach and stated that an "Engineering Check" was required for make-ready. "Engineering Check" has no

specific meaning in the context of make-ready work. After completing survey and design work, Sigma recommended that the pole be replaced to safely accommodate the requested attachment. The information provided by Zito for this pole is deficient and demonstrates that Zito did not properly perform its due diligence and instead relied on Sigma to perform the survey and design work for this pole.

13. On Pole 17, Zito requested attachment to a pole that is not owned by Penelec. Moreover, Zito failed to provide the height at which it sought to attach. The information provided by Zito for this pole is deficient. It demonstrates that Zito did not properly perform its due diligence because Zito submitted an attachment request for the wrong pole.
14. On Pole 18, Zito requested attachment to a pole that is not owned by Penelec. Moreover, Zito failed to provide the height at which it sought to attach. The information provided by Zito for this pole is deficient. It demonstrates that Zito did not properly perform its due diligence because Zito submitted an attachment request for the wrong pole.
15. On Pole 19, Zito requested attachment to a pole that is not owned by Penelec. The information provided by Zito is deficient. It demonstrates that Zito did not properly perform its due diligence because Zito submitted an attachment request for the wrong pole.
16. On Pole 20, Zito requested attachment to a pole that is not owned by Penelec. The information provided by Zito is deficient. It demonstrates that Zito did not properly perform its due diligence because Zito submitted an attachment request for the wrong pole.
17. On Pole 34, Zito failed to provide the height at which it sought to attach and stated that an “Engineering Check” was required for make-ready. “Engineering Check” has no specific meaning in the context of make-ready work. After completing survey and design work, Sigma recommended that the pole be replaced to safely accommodate the requested attachment. The information provided by Zito for this pole is deficient and demonstrates that Zito did not properly perform its due diligence and instead relied on Sigma to perform the survey and design work for this pole.
18. On Pole 50, Zito failed to provide the height at which it sought to attach and stated that an “Engineering Check” was required for make-ready because “Zito would be low over old gas co. site – parking lot.” “Engineering Check” has no specific meaning in the context of make-ready work. After completing survey and design work Sigma recommended that the pole be replaced to safely accommodate the requested attachment. The information provided by Zito for this pole is deficient and demonstrates that Zito did not properly perform its due diligence and instead relied on Sigma to perform the survey and design work for this pole.

19. Zito removed several of the poles from the 54-pole attachment request after Sigma completed survey and design work for the poles. In the past, Zito has removed poles from many other application packages after survey and design work has been completed.

I declare under penalty of perjury that the foregoing is true and correct.

By: 

Ryan J. Hetrick
President, Sigma Technologies, LTD

Dated: December 13, 2017

EXHIBIT 1

PROFILE SHEET

Pole Attachment Data
FORM NW030805 Pole 3

FirstEnergy

POWER COMPANY POLE NO. 2R-2231		TELEPHONE COMPANY POLE NO. LA-2	
STREET LOCATION S. MAIN ST. - WEPSEMENT		NAME OF ATTACHER Zito Media, L.P.	
CITY / BORO / TOWNSHIP RICHMOND TWP		DATE 5/24/16	FIELD PERSONNEL NAME JAR
ATTACHMENT TYPE <input checked="" type="checkbox"/> FOC <input type="checkbox"/> Guy Pole <input type="checkbox"/> Anchor Guy <input type="checkbox"/> Other (Explain in NOTES) *			
POLE CLASS & SIZE 3-55	TRANSFORMER / DEVICE ON POLE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	STREET LIGHT <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT TOP OF CONDUIT RISER HEIGHT 26'8"
GUYING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		CONDUIT RISER <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No; If Yes → <input checked="" type="checkbox"/> Primary <input type="checkbox"/> Secondary	
ANCHORS & GUYS	<input type="checkbox"/> 1st Down Guy, Size _____ Existing Anchor Eye(s): _____ <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Pole to Pole Guy (Pole No.) _____		
	<input type="checkbox"/> 2nd Down Guy, Size _____ Existing Anchor Eye(s): _____ <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Sidewalk Guy <input type="checkbox"/> Brace Pole <input type="checkbox"/> Slack Span		

POLE DRAWING	POLE NO. →	BEFORE MR-64	AFTER 2R-2230
	* TYPE OF POWER ATTACHMENT →	<input type="checkbox"/> Neutral <input type="checkbox"/> Secondary <input checked="" type="checkbox"/> Other (Explain in NOTES) *	
	Pole Side 30 PRI Riser Term. Lowest Power Attachment <input type="checkbox"/> Front <input checked="" type="checkbox"/> Back ← Attach. Ht. 30'5" Company Name 1. Zito Media <input checked="" type="checkbox"/> Front <input type="checkbox"/> Back ← Attach. Ht. _____ 2. DE TEL + RISER <input checked="" type="checkbox"/> Front <input type="checkbox"/> Back ← Attach. Ht. 26'5" 3. DE TEL <input type="checkbox"/> Front <input type="checkbox"/> Back ← Attach. Ht. 26'2" 4. 2 DETV <input type="checkbox"/> Front <input type="checkbox"/> Back ← Attach. Ht. 25'2" 5. DE TV <input checked="" type="checkbox"/> Front <input type="checkbox"/> Back ← Attach. Ht. 24'11" 6. _____ <input type="checkbox"/> Front <input type="checkbox"/> Back ← Attach. Ht. _____ Ground Line		
	SPAN CROSSES OVER (Check all that apply) <input type="checkbox"/> Body of Water <input type="checkbox"/> Street <input type="checkbox"/> Driveway <input checked="" type="checkbox"/> Field <input type="checkbox"/> Turnpike / Interstate <input type="checkbox"/> Swimming Pool <input type="checkbox"/> Building <input type="checkbox"/> Railroad <input checked="" type="checkbox"/> Yard <input type="checkbox"/> Parking Lot		

SPAN	<input type="checkbox"/> Body of Water <input type="checkbox"/> Street <input type="checkbox"/> Driveway <input checked="" type="checkbox"/> Field <input type="checkbox"/> Turnpike / Interstate <input type="checkbox"/> Swimming Pool <input type="checkbox"/> Building <input type="checkbox"/> Railroad <input checked="" type="checkbox"/> Yard <input type="checkbox"/> Parking Lot
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NOTES	N 41 46.706' W 77° 04.319'
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MAKE READY RECOMMENDATIONS	Engr check
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PROFILE SHEET

Pole Attachment Data
FORM NW030805

FirstEnergy

POWER COMPANY POLE NO. 2R-2225		TELEPHONE COMPANY POLE NO. L-74 LM	
STREET LOCATION S. MAIN ST.		NAME OF ATTACHER Zito Media, L.P.	
CITY / BORO / TOWNSHIP RICHMOND TWP		DATE 5/24/16	FIELD PERSONNEL NAME JAR
ATTACHMENT TYPE <input checked="" type="checkbox"/> FOC <input type="checkbox"/> Guy Pole <input type="checkbox"/> Anchor Guy <input type="checkbox"/> Other (Explain in NOTES) *			
POLE CLASS & SIZE NA NA	TRANSFORMER / DEVICE ON POLE <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT TOP OF CONDUIT RISER HEIGHT
GUYING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		CONDUIT RISER <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No; If Yes → <input type="checkbox"/> Primary <input type="checkbox"/> Secondary	
ANCHORS & GUYS	<input type="checkbox"/> 1st Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Pole to Pole Guy (Pole No.) _____		
	<input type="checkbox"/> 2nd Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Sidewalk Guy <input type="checkbox"/> Brace Pole <input type="checkbox"/> Slack Span		

POLE DRAWING	POLE NO. →	BEFORE 2R-2226	AFTER 2R-2224
	* TYPE OF POWER ATTACHMENT →	<input type="checkbox"/> Neutral <input checked="" type="checkbox"/> Secondary <input type="checkbox"/> Other (Explain in NOTES) **	
	Pole Side DE TRIPLEX Lowest Power Attachment <input type="checkbox"/> Front <input type="checkbox"/> Back Company Name 1. Zito Media 2. TV 3. 2 TEL BOXED 4. TEL 5. DE TEL 6. _____		
	Attach. Ht. 28'7" SEC D/L 28'2" Proposed Attach. Ht. _____ Attach. Ht. 24'9" Attach. Ht. 23'5" Attach. Ht. 22'5" Attach. Ht. 22'0" Attach. Ht. _____ Ground Line		

SPAN	SPAN CROSSES OVER (Check all that apply)				
	<input type="checkbox"/> Body of Water	<input type="checkbox"/> Street	<input checked="" type="checkbox"/> Driveway	<input type="checkbox"/> Field	<input type="checkbox"/> Turnpike / Interstate
	<input type="checkbox"/> Swimming Pool	<input type="checkbox"/> Building	<input type="checkbox"/> Railroad	<input checked="" type="checkbox"/> Yard	<input type="checkbox"/> Parking Lot

NOTES	TEL D/W CLEARANCE SOUTH 18'11"	N 41° 46.664'
	TEL M/S 14'0" - NORTH	W 77° 04.234'

MAKE READY RECOMMENDATIONS	Engv check

Pole Pic # 64

PROFILE SHEET

Pole Attachment Data

FORM NW030805 Pole 13

FirstEnergy

POWER COMPANY POLE NO. 2R-2222		TELEPHONE COMPANY POLE NO. NT	
STREET LOCATION S. MAW ST.		NAME OF ATTACHER Zito Media, L.P.	
CITY / EDPO / TOWNSHIP RICHMOND TWP.		DATE 5/24/16	FIELD PERSONNEL NAME JAR
ATTACHMENT TYPE <input checked="" type="checkbox"/> FOC <input type="checkbox"/> Guy Pole <input type="checkbox"/> Anchor Guy <input type="checkbox"/> Other (Explain in NOTES) *			
POLE CLASS & SIZE 3-55	TRANSFORMER / DEVICE ON POLE <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT 22' 2"
GUYING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		CONDUIT RISER <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No; If Yes → <input type="checkbox"/> Primary <input type="checkbox"/> Secondary	
ANCHORS & GUYS	<input type="checkbox"/> 1st Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Pole to Pole Guy (Pole No.) _____		
	<input type="checkbox"/> 2nd Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Sidewalk Guy <input type="checkbox"/> Brace Pole <input type="checkbox"/> Slack Span		

POLE DRAWING	POLE NO. →	BEFORE 2R-2222	AFTER 218511-158674
	* TYPE OF POWER ATTACHMENT →	<input type="checkbox"/> Neutral <input checked="" type="checkbox"/> Secondary <input type="checkbox"/> Other (Explain in NOTES) **	
	<div style="display: flex; align-items: center;"> <div style="flex: 1;"> <p>Company Name</p> <ol style="list-style-type: none"> Zito Media TU TEL 20E DE TEL TEL 20E </div> <div style="flex: 2;"> <p style="text-align: center;">Pole Side DE TRIPLEX</p> </div> </div>		

SPAN	SPAN CROSSES OVER (Check all that apply)								
	<input type="checkbox"/> Body of Water	<input type="checkbox"/> Street	<input checked="" type="checkbox"/> Driveway	<input type="checkbox"/> Field	<input type="checkbox"/> Turnpike / Interstate	<input type="checkbox"/> Swimming Pool	<input type="checkbox"/> Building	<input type="checkbox"/> Railroad	<input type="checkbox"/> Yard

NOTES	TEL PARKING LOT CLEARANCE SOUTH 20' 2"	N 41 46.533'
	TEL M/S 13' 8" @ D/W - North	W 71' 04.271'

MAKE READY RECOMMENDATIONS	Engv check

PROFILE SHEET

Pole Attachment Data

FORM NW030805 Pole 17

FirstEnergy

POWER COMPANY POLE NO. 2R-2229		TELEPHONE COMPANY POLE NO. L-90	
STREET LOCATION S. MAW ST.		NAME OF ATTACHER Zito Media, L.P.	
CITY / BORO / TOWNSHIP RICHMOND TWP		DATE 5/25/16	FIELD PERSONNEL NAME JAR
ATTACHMENT TYPE <input checked="" type="checkbox"/> FOC <input type="checkbox"/> Guy Pole <input checked="" type="checkbox"/> Anchor Guy <input type="checkbox"/> Other (Explain in NOTES) *			
POLE CLASS & SIZE NA NA	TRANSFORMER / DEVICE ON POLE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	STREET LIGHT <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT 29' 9"
GUYING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		CONDUIT RISER <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No; If Yes → <input type="checkbox"/> Primary <input type="checkbox"/> Secondary	
ANCHORS & GUYS	<input type="checkbox"/> 1st Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Pole to Pole Guy (Pole No.) _____		
	<input type="checkbox"/> 2nd Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Sidewalk Guy <input type="checkbox"/> Brace Pole <input type="checkbox"/> Slack Span		

POLE DRAWING	POLE NO. →	BEFORE 2R-2215	AFTER 2R-376
	* TYPE OF POWER ATTACHMENT →	<input type="checkbox"/> Neutral <input checked="" type="checkbox"/> Secondary <input type="checkbox"/> Other (Explain in NOTES) **	
	Company Name	Pole Side TRIPLEX Lowest Power Attachment ← Attach. Ht. 32' 10" <input type="checkbox"/> Front <input type="checkbox"/> Back SIDE	
	1. Zito Media 2. 2DE TV 3. TEL 4. DE TEL 5. 2DE TEL 6. 2DE TEL	Proposed Attach. Ht. _____ ← Attach. Ht. 29' 3" <input type="checkbox"/> Front <input type="checkbox"/> Back SIDE ← Attach. Ht. 28' 10" <input type="checkbox"/> Front <input checked="" type="checkbox"/> Back SIDE ← Attach. Ht. 28' 3" <input type="checkbox"/> Front <input checked="" type="checkbox"/> Back SIDE ← Attach. Ht. 27' 11" + 27' 9" <input type="checkbox"/> Front <input type="checkbox"/> Back SIDE ← Attach. Ht. 27' 2" + 26' 11" <input type="checkbox"/> Front <input type="checkbox"/> Back SIDE Ground Line	

SPAN	SPAN CROSSES OVER (Check all that apply)			
	<input type="checkbox"/> Body of Water <input type="checkbox"/> Swimming Pool	<input checked="" type="checkbox"/> Street <input type="checkbox"/> Building	<input checked="" type="checkbox"/> Driveway <input type="checkbox"/> Railroad	<input type="checkbox"/> Field <input checked="" type="checkbox"/> Yard <input type="checkbox"/> Turnpike / Interstate <input type="checkbox"/> Parking Lot

NOTES	7. TEL SIDE @ 26' 5" TEL D/W CLEARANCE WITH 21' 1" TEL RC 16' 3" - NORTH
	41' 46.35' W 77° 04.32'

MAKE READY RECOMMENDATIONS	Engv check

PROFILE SHEET

Pole Attachment Data

FORM NW030805 Pole 18

FirstEnergy

POWER COMPANY POLE NO 2R-376		TELEPHONE COMPANY POLE NO L-91	
STREET LOCATION S. MAIN ST.		NAME OF ATTACHEE Zito Media L.P.	
CITY, BORO / TOWNSHIP RICHMOND TWP		DATE 5/25/16	FIELD PERSONNEL NAME JAR
ATTACHMENT TYPE <input checked="" type="checkbox"/> FOC <input type="checkbox"/> Guy Pole <input type="checkbox"/> Anchor Guy <input type="checkbox"/> Other (Explain in NOTES) *			
POLE CLASS & SIZE NA NA	TRANSFORMER / DEVICE ON POLL <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT TOP OF CONDUIT RISER HEIGHT
GUYPING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		CONDUIT RISER <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No; If Yes → <input type="checkbox"/> Primary <input type="checkbox"/> Secondary	
ANCHORS & GUYS	<input type="checkbox"/> 1st Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Pole to Pole Guy (Pole No.) _____		
	<input type="checkbox"/> 2nd Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Sidewalk Guy <input type="checkbox"/> Brace Pole <input type="checkbox"/> Slack Span		

POLE DRAWING	POLE NO. →	BEFORE 2R-2229	AFTER L-92
	* TYPE OF POWER ATTACHMENT →	<input type="checkbox"/> Neutral <input type="checkbox"/> Secondary <input checked="" type="checkbox"/> Other (Explain in NOTES) **	
	CAPACITOR BANK BRACKET		
	Pole Side Lowest Power Attachment <input type="checkbox"/> Front <input type="checkbox"/> Back Company Name 1. Zito Media 2. TV 3. TEL 4. TEL 5. TEL 6. _____ Ground Line		

SPAN	SPAN CROSSES OVER (Check all that apply)			
	<input type="checkbox"/> Body of Water <input type="checkbox"/> Swimming Pool	<input type="checkbox"/> Street <input type="checkbox"/> Building	<input checked="" type="checkbox"/> Driveway <input type="checkbox"/> Railroad	<input type="checkbox"/> Field <input checked="" type="checkbox"/> Yard <input type="checkbox"/> Tumpike / Interstate <input type="checkbox"/> Parking Lot

NOTES	TEL ROAD CLEARANCE EAST 16' 11"	N 41° 16.322'
	TEL Old Clearance South 14' 1"	W 77° 04.394'

MAKE READY RECOMMENDATIONS	Engr check

PROFILE SHEET
Pole Attachment Data
FORM NW030805 Pole 19

FirstEnergy.

POWER COMPANY POLE NO. 2R-2232		TELEPHONE COMPANY POLE NO. L-94	
STREET LOCATION S. MAIN ST		NAME OF ATTACHER Zito Media, L.P.	
CITY / BORO / TOWNSHIP RICHMOND TWP		DATE 5/25/16	FIELD PERSONNEL NAME JAR
ATTACHMENT TYPE <input checked="" type="checkbox"/> FOC <input type="checkbox"/> Guy Pole <input type="checkbox"/> Anchor Guy <input type="checkbox"/> Other (Explain in NOTES) *			
POLE CLASS & SIZE 4-35	TRANSFORMER / DEVICE ON POLE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	STREET LIGHT <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT TOP OF CONDUIT RISER HEIGHT
BUYING REQUIRED FOR ANGLE, CORNER OR TAP POLE CONSTRUCTION <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		CONDUIT RISER <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No; If Yes → <input type="checkbox"/> Primary <input type="checkbox"/> Secondary	
ANCHORS & GUYS	<input type="checkbox"/> 1st Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Pole to Pole Guy (Pole No.) _____		
	<input type="checkbox"/> 2nd Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Sidewalk Guy <input type="checkbox"/> Brace Pole <input type="checkbox"/> Slack Span		

POLE DRAWING	POLE NO. →	BEFORE L-92	AFTER L-95
	* TYPE OF POWER ATTACHMENT →	<input type="checkbox"/> Neutral <input checked="" type="checkbox"/> Secondary <input type="checkbox"/> Other (Explain in NOTES) **	
	<p>Company Name</p> <ol style="list-style-type: none"> Zito Media TV 2 TEL BOXED TEL 		

Pole Side **DE Triplex**

Lowest Power Attachment	<input type="checkbox"/> Front <input checked="" type="checkbox"/> Back	Attach. Ht. 27'8"
	<input checked="" type="checkbox"/> Front <input type="checkbox"/> Back	Proposed Attach. Ht. 24'5"
	<input checked="" type="checkbox"/> Front <input type="checkbox"/> Back	Attach. Ht. 23'7"
	<input checked="" type="checkbox"/> Front <input checked="" type="checkbox"/> Back	Attach. Ht. 22'8"
	<input checked="" type="checkbox"/> Front <input type="checkbox"/> Back	Attach. Ht. 22'1"
	<input type="checkbox"/> Front <input type="checkbox"/> Back	Attach. Ht. _____
	<input type="checkbox"/> Front <input type="checkbox"/> Back	Attach. Ht. _____

..... Ground Line

SPAN	SPAN CROSSES OVER (Check all that apply)								
	<input type="checkbox"/> Body of Water	<input type="checkbox"/> Street	<input checked="" type="checkbox"/> Driveway	<input type="checkbox"/> Field	<input type="checkbox"/> Turnpike / Interstate	<input type="checkbox"/> Swimming Pool	<input type="checkbox"/> Building	<input type="checkbox"/> Railroad	<input checked="" type="checkbox"/> Yard

NOTES	TEL DW CLEARANCE SOUTH 19'4"	N 41° 46' 26" W 11° 04' 42"
	OK Pole	

MAKE READY RECOMMENDATIONS	

Pole Pic # 74

PROFILE SHEET

Pole Attachment Data

FORM NW030805 Pole 70

FirstEnergy

POWER COMPANY POLE NO. 218409-858415		TELEPHONE COMPANY POLE NO. L-101	
STREET LOCATION S. MAIN ST.		NAME OF ATTACHER Zito Media, L.P.	
CITY / BORO / TOWNSHIP RICHMOND TWP		DATE 5/25/16	FIELD PERSONNEL NAME JAR
ATTACHMENT TYPE <input checked="" type="checkbox"/> FOC <input type="checkbox"/> Guy Pole <input type="checkbox"/> Anchor Guy <input type="checkbox"/> Other (Explain in NOTES) *			
POLE CLASS & SIZE 3-50	TRANSFORMER / DEVICE ON POLE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	STREET LIGHT <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT
GUYING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		CONDUIT RISER <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No; If Yes → <input type="checkbox"/> Primary <input type="checkbox"/> Secondary	
ANCHORS & GUYS	<input type="checkbox"/> 1st Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Pole to Pole Guy (Pole No.) _____		<input type="checkbox"/> 2nd Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Sidewalk Guy <input type="checkbox"/> Brace Pole <input type="checkbox"/> Slack Span

POLE DRAWING	POLE NO. →	BEFORE L-99	AFTER 218394-858417
	* TYPE OF POWER ATTACHMENT →	<input type="checkbox"/> Neutral <input type="checkbox"/> Secondary <input checked="" type="checkbox"/> Other (Explain in NOTES) **	
	<div style="display: flex; align-items: center;"> <div style="flex: 1;"> <p>Company Name</p> <p>1. Zito Media</p> <p>2. TV</p> <p>3. TEL</p> <p>4. TEL</p> <p>5. TEL</p> <p>6. _____</p> </div> <div style="flex: 2; text-align: center;"> <p>Pole Side</p> <p>Lowest Power Attachment</p> <p>Attach. Ht. 34'9"</p> <p>Proposed Attach. Ht. 25'0"</p> <p>Attach. Ht. 24'0"</p> <p>Attach. Ht. 22'6"</p> <p>Attach. Ht. 21'8"</p> <p>Attach. Ht. 20'11"</p> <p>Ground Line</p> </div> <div style="flex: 1; text-align: right;"> <p>PRI CROSS BRACE</p> </div> </div>		
	<p>..... Ground Line</p>		

SPAN	SPAN CROSSES OVER (Check all that apply)				
	<input type="checkbox"/> Body of Water <input type="checkbox"/> Swimming Pool	<input checked="" type="checkbox"/> Street <input type="checkbox"/> Building	<input checked="" type="checkbox"/> Driveway <input type="checkbox"/> Railroad	<input type="checkbox"/> Field <input checked="" type="checkbox"/> Yard	<input type="checkbox"/> Turnpike / Interstate <input type="checkbox"/> Parking Lot

NOTES	TEL ROAD CLEARANCE EAST 19'
	OK Rte

MAKE READY RECOMMENDATIONS	

PROFILE SHEET

Pole Attachment Data

FORM NW030805 Pole 34

FirstEnergy

POWER COMPANY POLE NO. MB-89		TELEPHONE COMPANY POLE NO.	
STREET LOCATION S. MAIN ST. - W. EASEMENT		NAME OF ATTACHER Zito Media, L.P.	
CITY/BORO/TOWNSHIP RICHMOND TWP		DATE 5/25/16	FIELD PERSONNEL NAME JAR
ATTACHMENT TYPE <input checked="" type="checkbox"/> FOC <input type="checkbox"/> Guy Pole <input type="checkbox"/> Anchor Guy <input type="checkbox"/> Other (Explain in NOTES) *			
POLE CLASS & SIZE NA-55	TRANSFORMER / DEVICE ON POLE <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT 17'7"
GUYING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		TOP OF CONDUIT RISER HEIGHT 16'8" + 16'8" + 16'5"	
		CONDUIT RISER <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No; If Yes → <input type="checkbox"/> Primary <input checked="" type="checkbox"/> Secondary	
ANCHORS & GUYS	<input type="checkbox"/> 1st Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Pole to Pole Guy (Pole No.) _____		
	<input type="checkbox"/> 2nd Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Sidewalk Guy <input type="checkbox"/> Brace Pole <input type="checkbox"/> Slack Span		

POLE DRAWING	POLE NO. →	BEFORE MB-88	AFTER MB-90
	* TYPE OF POWER ATTACHMENT →	<input type="checkbox"/> Neutral <input type="checkbox"/> Secondary <input checked="" type="checkbox"/> Other (Explain in NOTES) *	
<div style="display: flex; align-items: flex-start;"> <div style="flex: 1;"> <p>Company Name</p> <p>1. <u>Zito Media</u></p> <p>2. _____</p> <p>3. _____</p> <p>4. _____</p> <p>5. _____</p> <p>6. _____</p> </div> <div style="flex: 2; text-align: center;"> <p>Pole Side</p> <p>Lowest Power Attachment</p> <p><input type="checkbox"/> Front <input type="checkbox"/> Back</p> <p><input type="checkbox"/> Front <input type="checkbox"/> Back</p> <p><input type="checkbox"/> Front <input type="checkbox"/> Back</p> <p><input type="checkbox"/> Front <input type="checkbox"/> Back</p> <p><input type="checkbox"/> Front <input type="checkbox"/> Back</p> <p><input type="checkbox"/> Front <input type="checkbox"/> Back</p> <p><input type="checkbox"/> Front <input type="checkbox"/> Back</p> <p>Ground Line</p> </div> <div style="flex: 1; text-align: right;"> <p>BOTTOM OF TRANSFORMER</p> <p>← Attach. Ht. 18'8"</p> <p>SEC D/L 16'9"</p> <p>← Proposed Attach. Ht. _____</p> <p>← Attach. Ht. _____</p> <p>← Attach. Ht. _____</p> <p>← Attach. Ht. _____</p> <p>← Attach. Ht. _____</p> <p>← Attach. Ht. _____</p> </div> </div>			

SPAN	SPAN CROSSES OVER (Check all that apply)					
	<input type="checkbox"/> Body of Water	<input type="checkbox"/> Street	<input checked="" type="checkbox"/> Driveway	<input type="checkbox"/> Field	<input type="checkbox"/> Turnpike / Interstate	<input type="checkbox"/> Swamping Pool
	<input type="checkbox"/> Building	<input type="checkbox"/> Railroad	<input checked="" type="checkbox"/> Yard	<input checked="" type="checkbox"/> Parking Lot		

NOTES	

MAKE READY RECOMMENDATIONS	Eng ✓ check

PROFILE SHEET

Pole Attachment Data

FORM NW030805 Pole 50

FirstEnergy

POWER COMPANY POLE NO MG-105		TELEPHONE COMPANY POLE NO	
STREET LOCATION COWAN RD - E. EDSEMENT		NAME OF ATTACHER Zito Media, L.P.	
CITY / BORO / TOWNSHIP COWINGTON TWP		DATE 5/26/16	FIELD PERSONNEL NAME JAR
ATTACHMENT TYPE <input checked="" type="checkbox"/> FOC <input type="checkbox"/> Guy Pole <input type="checkbox"/> Anchor Guy <input type="checkbox"/> Other (Explain in NOTES) *			
POLE CLASS & SIZE NA NA	TRANSFORMER / DEVICE ON POLE <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	STREET LIGHT <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	STREET LIGHT BRACKET HEIGHT 18'1"
GUYING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		CONDUIT RISER <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No; If Yes → <input type="checkbox"/> Primary <input checked="" type="checkbox"/> Secondary	
ANCHORS & GUYS	<input type="checkbox"/> 1st Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Pole to Pole Guy (Pole No.) _____		
	<input type="checkbox"/> 2nd Down Guy, Size _____ Existing Anchor Eye(s): <input type="checkbox"/> Single Use <input type="checkbox"/> Joint Use; Available Positions _____ <input type="checkbox"/> Anchor Attach; Available Positions _____ <input type="checkbox"/> Sidewalk Guy <input type="checkbox"/> Brace Pole <input type="checkbox"/> Slack Span		

POLE DRAWING	POLE NO. →	BEFORE MG-104	AFTER MG-106
	* TYPE OF POWER ATTACHMENT →	<input type="checkbox"/> Neutral <input type="checkbox"/> Secondary <input checked="" type="checkbox"/> Other (Explain in NOTES) **	
	Pole Side: TRANSFORMER BOTTOM Lowest Power Attachment: <input checked="" type="checkbox"/> Attach. Ht. 18'7" SEC O/L 17'2" Company Name: _____ 1. Zito Media <input checked="" type="checkbox"/> Front <input type="checkbox"/> Back Proposed Attach. Ht. _____ 2. _____ <input type="checkbox"/> Front <input type="checkbox"/> Back Attach. Ht. _____ 3. _____ <input type="checkbox"/> Front <input type="checkbox"/> Back Attach. Ht. _____ 4. _____ <input type="checkbox"/> Front <input type="checkbox"/> Back Attach. Ht. _____ 5. _____ <input type="checkbox"/> Front <input type="checkbox"/> Back Attach. Ht. _____ 6. _____ <input type="checkbox"/> Front <input type="checkbox"/> Back Attach. Ht. _____ Ground Line		
	SPAN CROSSES OVER (Check all that apply) <input checked="" type="checkbox"/> Body of Water <input type="checkbox"/> Street <input checked="" type="checkbox"/> Driveway <input checked="" type="checkbox"/> Field <input type="checkbox"/> Turnpike / Interstate <input type="checkbox"/> Swimming Pool <input type="checkbox"/> Building <input type="checkbox"/> Railroad <input checked="" type="checkbox"/> Yard <input checked="" type="checkbox"/> Parking Lot		

SPAN	<input checked="" type="checkbox"/> Body of Water <input type="checkbox"/> Street <input checked="" type="checkbox"/> Driveway <input checked="" type="checkbox"/> Field <input type="checkbox"/> Turnpike / Interstate <input type="checkbox"/> Swimming Pool <input type="checkbox"/> Building <input type="checkbox"/> Railroad <input checked="" type="checkbox"/> Yard <input checked="" type="checkbox"/> Parking Lot
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NOTES	
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MAKE READY RECOMMENDATIONS	Eng check (Zito would be loc over old Gas Co. site - Parking Lot)
----------------------------	--

ATTACHMENT D

MARCUS & MACK

Attorneys at Law

A PROFESSIONAL CORPORATION

■ 1-(800) 488-0338
www.marcusandmack.com

The Mitchell House ■ 57 South 6th Street ■ P.O. Box 1107 ■ Indiana, PA 15701

■ (724) 349-5602
(724) 349-8362 (fax)

December 1, 2017

BY E-MAIL ONLY:

Charles E. Wasilefski, Esq.
Peters & Wasilefski
2931 North Front Street
Harrisburg, PA 17110

Christopher J. Sichok, Esq.
Law Offices of Terry L.M. Bashline
6 PPG Place, Suite 750
Pittsburgh, PA 15222

RE: Thomas Forlina, et ux., vs. FirstEnergy, et al.

Gentlemen:

Enclosed please find a Stipulation of Counsel to File Second Amended Complaint and the Second Amended Complaint regarding the above-referenced matter. In regard to the original Defendants, the allegations remain the same. I merely made some adjustments to account for the Plaintiffs' direct claim against Zito LLC i/t/d/b/a Zito Media, L.P.

Would each of you kindly sign and return the Stipulation if the same meets with your approval. If you are not willing to sign the Stipulation, kindly advise so I may timely seek leave of Court or file at a new docket number.

Sincerely yours,

MARCUS & MACK, P.C.

By:

Bryan S. Neiderhiser, Esq.

BSN:csh
Enclosures

IN THE COURT OF COMMON PLEAS
BLAIR COUNTY, PENNSYLVANIA

THOMAS FORLINA AND
SHARON FORLINA, HIS WIFE,

PLAINTIFFS

VS.

CIVIL ACTION

No. 2016 – GN - 2184

JURY TRIAL DEMANDED

FIRSTENERGY CORP., AN OHIO
CORPORATION, T/D/B/A PENELEC;
PENNSYLVANIA ELECTRIC COMPANY,
A PENNSYLVANIA CORPORATION

DEFENDANTS

VS.

ZITO MEDIA, L.P.,

ADDITIONAL DEFENDANT

**STIPULATION OF COUNSEL
TO FILE SECOND AMENDED
COMPLAINT**

Filed on behalf of Plaintiffs

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496
Email: bneiderhiser@marcusandmack.com

IN THE COURT OF COMMON PLEAS
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DEFENDANTS

VS.

ZITO MEDIA, L.P.,

ADDITIONAL DEFENDANT

STIPULATION OF COUNSEL TO FILE SECOND AMENDED COMPLAINT

It is hereby stipulated and agreed to by and between Bryan S. Neiderhiser, Esquire, of Marcus & Mack, P.C., Counsel for the Plaintiffs, and Charles E. Wasilefski, Esq., Counsel for original Defendants, and Christopher J. Sichok, Esq., Counsel for Additional Defendant, that Plaintiffs are permitted to file a Seconded Amended Complaint to add Zito, LLC i/t/d/b/a Zito Media, L.P., as a Defendant. A copy of this Second Amended Complaint is attached hereto as Exhibit “A”.

MARCUS & MACK, P.C.

By: _____
Bryan S. Neiderhiser, Esquire
57 South Sixth Street, P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 81496
Attorney for Plaintiffs

Dated: December ____, 2017

PETERS & WASILEFSKI

By: _____
Charles E. Wasilefski, Esq.
2931 North Front Street
Harrisburg, PA 17110
Attorney for Original Defendants

Dated: December ____, 2017

LAW OFFICES OF TERRY L.M. BASHLINE

By: _____
Christopher J. Sichok, Esq.
6 PPG Place, Suite 750
Pittsburgh, PA 15222
Attorney for Additional Defendant

Dated: December ____, 2017

IN THE COURT OF COMMON PLEAS
BLAIR COUNTY, PENNSYLVANIA

THOMAS FORLINA AND
SHARON FORLINA, HIS WIFE,

CIVIL ACTION

No. 2016 – GN - 2184

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DEFENDANTS

VS.

ZITO MEDIA, L.P.,

ADDITIONAL DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **STIPULATION OF COUNSEL TO FILE SECOND AMENDED COMPLAINT** was mailed, U.S. First Class mail, to the following this _____ day of _____, 2017:

Charles E. Wasilefski, Esq.
Peters & Wasilefski
2931 North Front Street
Harrisburg, PA 17110
Attorney for Original Defendants

Christopher J. Sichok, Esq.
Law Offices of Terry L.M. Bashline
6 PPG Place, Suite 750
Pittsburgh, PA 15222
Attorney for Additional Defendant, Zito Media, L.P.

IN THE COURT OF COMMON PLEAS
BLAIR COUNTY, PENNSYLVANIA

THOMAS FORLINA AND
SHARON FORLINA, HIS WIFE,

PLAINTIFFS

VS.

CIVIL ACTION

No. 2016 – GN - 2184

JURY TRIAL DEMANDED

FIRSTENERGY CORP., AN OHIO
CORPORATION, T/D/B/A PENELEC;
PENNSYLVANIA ELECTRIC COMPANY,
A PENNSYLVANIA CORPORATION;
ZITO, LLC, i/t/d/b/a ZITO MEDIA, L.P.

DEFENDANTS

VS.

ZITO MEDIA, L.P.,

ADDITIONAL DEFENDANT

**SECOND AMENDED COMPLAINT
IN CIVIL ACTION**

Filed on behalf of Plaintiffs

Bryan S. Neiderhiser, Esquire
Counsel for Plaintiff
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496
Email: bneiderhiser@marcusandmack.com



IN THE COURT OF COMMON PLEAS
BLAIR COUNTY, PENNSYLVANIA

THOMAS FORLINA AND
SHARON FORLINA, HIS WIFE,

PLAINTIFFS

VS.

CIVIL ACTION

No. 2016 – GN - 2184

JURY TRIAL DEMANDED

FIRSTENERGY CORP., AN OHIO
CORPORATION, T/D/B/A PENELEC;
PENNSYLVANIA ELECTRIC COMPANY,
A PENNSYLVANIA CORPORATION;
ZITO, LLC, i/t/d/b/a ZITO MEDIA, L.P.

DEFENDANTS

VS.

ZITO MEDIA, L.P.,

ADDITIONAL DEFENDANT

NOTICE TO PLEAD

TO: FirstEnergy Corp., an Ohio Corporation, t/d/b/a Penelec; Pennsylvania Electric Company, a Pennsylvania Corporation; Zito Media, L.P.; Zito, LLC, i/t/d/b/a Zito Media, L.P., Defendants

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Second Amended Complaint and Notice are served, by entering in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Second Amended Complaint or for any other claim or relief requested by the Plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO
PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL
SERVICES TO ELIGIBLE PERSONS AT REDUCED FEE OR NO FEE.

MidPenn Legal Services
205 Lakemont Park Blvd.
Altoona, PA 16602
814-943-8139 or
800-326-9177

Respectfully submitted,

MARCUS & MACK, P.C.

By: _____
Bryan S. Neiderhiser, Esquire
57 South Sixth Street, P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID #81496

IN THE COURT OF COMMON PLEAS
BLAIR COUNTY, PENNSYLVANIA

THOMAS FORLINA AND
SHARON FORLINA, HIS WIFE,

PLAINTIFFS

VS.

CIVIL ACTION

No. 2016 – GN - 2184

JURY TRIAL DEMANDED

FIRSTENERGY CORP., AN OHIO
CORPORATION, T/D/B/A PENELEC;
PENNSYLVANIA ELECTRIC COMPANY,
A PENNSYLVANIA CORPORATION;
ZITO, LLC, i/t/d/b/a ZITO MEDIA, L.P.

DEFENDANTS

VS.

ZITO MEDIA, L.P.,

ADDITIONAL DEFENDANT

SECOND AMENDED COMPLAINT IN CIVIL ACTION

AND NOW, come the Plaintiffs, Thomas Forlina and Sharon Forlina, his wife, by and through their attorneys, Bryan S. Neiderhiser, Esquire, and Marcus & Mack, P.C., and file the following Second Amended Complaint:

1. Plaintiffs, Thomas Forlina and Sharon Forlina, his wife, are married individuals who reside in Altoona, Blair County, Pennsylvania.
2. Defendant FirstEnergy Corp., is an Ohio corporation, with its registered office c/o CT Corporation System, 1300 E. 9th St., Cleveland, Cuyahoga County, Ohio 44114. It is believed, and therefore averred, that Defendant FirstEnergy Corp. also trades and does business as Penelec.

3. Defendant Pennsylvania Electric Company is a Pennsylvania corporation that maintains a business address of 405 W. Plank Road, Altoona, Blair County, Pennsylvania, 16602.

4. Defendant Zito, LLC, i/t/d/b/a Zito Media, L.P. is structured as follows: Zito, LLC is a Delaware Limited Liability company with a registered office of c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. It is also believed and therefore averred that said entity maintains an address of 106 Steerbrook Road, Coudersport, PA 16915. Zito, LLC is the sole general partner of Zito Media, L.P. which is a Delaware limited partnership. Zito Media L.P. maintains a registered address of The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. It is also believed and therefore averred that Zito Media, L.P. maintains an address of 106 Steerbrook Road, Coudersport, PA 16915.

5. At all times relevant hereto, Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company, owned, maintained, possessed, controlled and/or was/were responsible for a certain pole designated as #DC-70521, and accompanying electrical wires/lines and guy wires, anchors, preformed guy grip and associated hardware and/or implements (hereinafter referred to as the "Subject Components") located along Carbon Mine Road, Clearfield, Clearfield County, Pennsylvania.

6. The incident giving rise to the instant suit occurred on January 27, 2016, when Plaintiff, Thomas Forlina, was working at and/or in proximity to the Subject Components. Specifically, Plaintiff suffered a severe electrical shock, electrical burns and serious injuries when he contacted a guy wire that was affixed leading to Pole #DC-70521. The electrical shock that the Plaintiff received was a direct result of the negligence and deficiencies set forth below.

7. Said pole contained high voltage electrical wires/lines; however, the guy wire should not have been energized.

8. Because of the negligence of each, one, some and/or all of the Defendants, Mr. Forlina was present in the area of the above and below noted deficiencies, the guy wire became energized and the flow of electrical current through the same led to the electrical shock and resultant injuries and damages as are set forth below.

9. At all times relevant hereto, Plaintiff Thomas Forlina was present at the incident site with the permission, knowledge, consent of and/or at the request and/or direction of each, some and/or all of the Defendants.

10. At all times relevant hereto, Plaintiff was an invitee or licensee at the incident site.

11. Plaintiff was present on the Incident site for the ultimate purposes of attempting to install a new fiber optic cable for his employer, Tel-Power, Inc.

12. Tel-Power, Inc. was given permission to be present for the above stated purposes by Defendant Zito, LLC i/t/d/b/a Zito Media, L.P.

13. The guy wire was not properly insulated with a Guy Insulator, Johnny Ball and/or similarly purposed device(s)/component(s).

14. The anchor, preformed guy grip and/or guy wire in use at the subject pole was deteriorated and/or in a state of disrepair and was/were not proper and/or appropriate for use as existed at the time of the incident.

15. The above noted deficiency/ies existed for a prolonged and extended period of time.

16. As a result of each some and/or all of the above noted deficiencies, the guy wire became slack and, thus, became energized.

17. A guy wire should not be energized.

18. A properly installed, inspected and/or maintained pole and its subject components should contain, when necessary and/or appropriate, a guy wire that is capable of being touched by a person without becoming slack and/or without resultant electrical shock.

19. The subject guy wire and/or its component parts was/were not properly installed, inspected and/or maintained.

20. At the time of the subject incident, the guy wire and accompanying electrical wires/lines present on the subject pole at the Incident site contained high voltage electrical current.

21. The aforementioned Subject Components were located outside in an area that was accessible to the public at large.

22. Each, one, some and/or all of the above noted deficiencies constituted a dangerous condition and/or dangerous conditions.

23. At all times relevant hereto, each, some and/or all of the Defendants knew, or should have known, of the dangers and potential for devastation posed by the Subject Components.

24. Despite its/their knowledge that individuals would actually be, were, and/or could foreseeably be working in the area of the Subject Components, each, some and/or all of the Defendants took no measures and/or took inadequate measures to protect said individuals, and Plaintiff Thomas Forlina, in particular, from the presence of high voltage electrical current and the potential for electrical shock and its attendant consequences.

25. Each, some and/or all of the Defendants knew, or should have known, of the aforementioned deficiencies and/or dangerous condition(s).

26. Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company caused and/or created the aforementioned deficiencies and/or dangerous condition(s).

27. The applicable standards, guidelines and/or rules for electrical components of the voltage involved herein are set forth by the Occupational Safety and Health Administration and in the National Electrical Code, NFPA70E and/or the National Electrical Safety Code.

28. Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company was/were required to inspect, maintain repair and/or clean the Subject Components on a routine/periodic basis.

29. Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company did not routinely, periodically and/or properly inspect, maintain and/or clean the Subject Component(s).

30. The duty owed to Plaintiff Thomas Forlina by each, some and/or all of the Defendants was the highest degree of care practicable to avoid injury to everyone who may be lawfully in the area of such activity.

31. That duty has been defined in Pennsylvania as requiring not only the safe and proper installation of the electrical lines and Subject Components but also requires the owner to maintain the same in a safe condition.

32. Pennsylvania law also mandates that Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company inspect to insure the safety and proper maintenance of the electrical system and/or Subject Components by performing reasonable periodic inspections.

33. Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company did not reasonably and/or periodically inspect the Subject Components as required by law, by the National Electrical Safety Code, by the NFPA 70E, by the National Electrical Code, by industry standards and/or pursuant to the standards of each, one and/or both of the Defendants.

COUNT I – NEGLIGENCE AND CONDUCT GIVING RISE TO PUNITIVE DAMAGES

THOMAS FORLINA, PLAINTIFF

VS.

FIRSTENERGY CORP., t/d/b/a PENELEC; PENNSYLVANIA ELECTRIC COMPANY,
DEFENDANTS

34. Each of the above paragraphs is incorporated herein by reference.

35. The injuries and damages set forth below were caused and/or contributed to by, and were the direct and proximate result of, the negligent, careless, reckless, willful, wanton and/or outrageous conduct and/or inaction of each, one and/or all of the above captioned Defendants as set forth above, below, and in the following particulars:

- a. In violating the National Electrical Code, NFPA70E and/or the National Electrical Safety Code by failing to properly and/or routinely inspect, maintain and/or clean the Subject Components;
- b. In failing to have proper and/or appropriate warnings of the presence of high voltage electrical current in the guy wire;
- c. In failing to properly and/or appropriately inspect the premises and/or Subject Components to ensure the safety of people in proximity thereto;
- d. In failing to reasonably and/or periodically inspect and/or check the Subject Components;
- e. In failing to have adequate engineering design and/or contracting of the Subject Components;
- f. In having a guy wire that was not properly insulated with a Guy Insulator and/or Johnny Ball;
- g. In utilizing and/or allowing the presence of an anchor to secure the guy wire that was deteriorated and/or in a state of disrepair and which was not proper and/or appropriate for use as it existed at the time of the incident and for a prolonged period of time preceding the same;
- h. In utilizing and/or allowing the presence of a preformed guy grip that was deteriorated and/or in a state of disrepair and which was not proper and/or appropriate for use at the time of the incident and for a prolonged period of time preceding the same; and,

- i. In allowing the guy wire to become situated in a slack position.

36. Pennsylvania law recognizes that electricity is a dangerous instrumentality no matter where it is located, and further recognizes that it is a source of grave peril.

37. Pennsylvania law required each, some and/or all of the above captioned Defendants to exercise a high degree of care. In fact, Pennsylvania law provides that the dangers posed by electricity cannot be understated, and its possessor must take all practicable precautions necessary to save and preserve human lives. Bailey v. Pennsylvania Electric Company, 598 A.2d 41, 45 (Pa. Super 1991).

38. The applicable standard for the possessor of high voltage electric components was set forth as follows:

... the owner of high-voltage electric machinery may not avoid responsibility for the devastation caused through his failure to adequately guard such uninhibited devices. This Court has declared that when human life is at stake the rule of due care and diligence require everything that gives reasonable promise of its preservation to be done regardless of difficulties or expense.

Bailey v. Pennsylvania Electric Company, 598 A.2d 41, 48 (Pa. Super 1991), quoting Beary v. Container General Corp., 533 A.2d 716, 720 (Pa. Super. 1987).

39. Pennsylvania law also establishes that anyone who provides, supplies, or uses an inherently dangerous instrumentality, such as high voltage electric current, is required to use the highest degree of care practicable to avoid injury to everyone who may be lawfully in the area of such activity.

40. Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company knew or should have known that any and/or all of the above-described conditions and/or failures would create a high degree of risk of harm to Plaintiff Thomas Forlina and others at the premises.

41. Any and/or all of the actions, inactions and/or failures of Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company as set forth above were outrageous, reckless, willful and/or wanton.

42. Any and/or all of the above referenced conduct and/or failures was/were willful, wanton, outrageous and/or reckless.

43. In conscious disregard, indifference, reckless indifference and/or willful, reckless and/or wanton disregard for the rights and safety of Plaintiff Thomas Forlina and the risk and/or likelihood of serious and permanent injury to Plaintiff, Thomas Forlina, Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company allowed the Subject Components to exist in the aforementioned dangerous condition(s).

44. In acting and/or failing to act as set forth above, Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company acted with reckless disregard and/or indifference to the interests of Plaintiff Thomas Forlina and others present at the Incident site, resulting in severe injuries to Plaintiff Thomas Forlina.

45. In conscious disregard, indifference or reckless indifference to the aforesaid risk(s), Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company acted in the above-described manner.

46. Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company's actions were a direct and proximate cause of the injuries and damages as set forth below.

47. As a result of the aforesaid incident, Plaintiff Thomas Forlina has suffered, among other things, the following injuries:

- a. Full thickness, third degree electrical burn ulcer with necrosis to due to exit wound from electrocution to the distal medial aspect of his left foot, requiring incision and surgical debridement of wound eschar to his left foot with wound VAC dressing application;
- b. Palpation to his left foot, particularly in the periwound area, with significant edema to his left foot;
- c. Follow-up procedures of irrigation and debridement of wound and VAC dressings and follow-up wound closure;
- d. Severe pain and discomfort to his left foot and toes;
- e. Severe injury to his left foot and toes;
- f. Deep, full thickness 2nd degree to his left hand, together with deep areas of burn to the palmar aspect of the digits of the left hand, due to entry wound from electrocution, requiring daily santyl poly dressings and hydrotherapy for management of his left palmar burn;
- g. Severe pain and discomfort to his left hand and digits/fingers;
- h. Severe injury to his left hand and digits/fingers;
- i. Shock and loss of consciousness due to electrocution;
- j. Severe pain and discomfort to his head due to the fall after electrocution;
- k. Severe injury to his head;
- l. Loss of hearing;
- m. Anxiety, insomnia/sleep difficulty, mood swings, and depression;
- n. Severe emotional distress and shock to his nerves and nervous system;
- o. Other injuries and damages recoverable at law; and,
- p. Some or all of the above injuries may be permanent in nature.

48. As a result of the aforesaid injuries, Plaintiff Thomas Forlina has suffered the

following damages:

- a. He has incurred in the past, and will incur in the future, substantial medical expenses;

- b. He has suffered in the past, and will suffer in the future, substantial pain, suffering, and inconvenience and the loss of certain of the ordinary pleasures of life;
- c. He has sustained in the past, and may sustain in the future, substantial scarring and disfigurement;
- d. He has sustained, and may sustain in the future, loss of earnings and/or earning capacity; and
- e. He has sustained in the past, and will sustain in the future, other emotional, economic and physical harm.

WHEREFORE, Plaintiff Thomas Forlina demands judgment against Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company, along with punitive damages, fees, costs and interest, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT II – LOSS OF CONSORTIUM
SHARON FORLINA, PLAINTIFF,

VS.

FIRSTENERGY CORP., t/d/b/a PENELEC; PENNSYLVANIA ELECTRIC COMPANY,
DEFENDANTS

49. Each of the above paragraphs is incorporated herein by reference.

50. At all times relevant hereto Plaintiff Sharon Forlina was married to, and resided with, Plaintiff, Thomas Forlina.

51. As a result of the injuries to her spouse, Plaintiff Sharon Forlina has lost the society, comfort and services of her spouse.

52. As a result of the injuries to her spouse, Plaintiff Sharon Forlina has in the past and/or may in the future be required to expend substantial sums of money for her husband's medical and other health-care expenses.

53. As a result of the injuries to her spouse, Plaintiff Sharon Forlina has in the past and/or may in the future incur loss of wages and/or other economic losses.

WHEREFORE, Plaintiff Sharon Forlina demands judgment against Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company, along with punitive damages, fees, costs and interest, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT III – NEGLIGENCE
THOMAS FORLINA, PLAINTIFF
VS.
ZITO, LLC i/t/d/b/a ZITO MEDIA, L.P., DEFENDANTS

54. Each of the above paragraphs is incorporated herein by reference.

55. At all times relevant to this litigation the Zito Defendant(s) (hereafter “Zito”) had a contract with an entity that is not a party to this suit which required, in part, the installation of fiber optic cable on and through the area of the subject pole.

56. To accomplish the installation of fiber optic cable on and through the area of the subject pole, Mr. Forlina’s employer’s services were utilized by Zito.

57. Zito was aware that it needed to engage in, and complete, a permit process in order to have approval to attach fiber optic materials to poles owned by Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company.

58. The subject pole was owned, controlled and/or supposed to be maintained by Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company.

59. Zito failed to obtain the proper permits before authorizing Mr. Forlina and/or his employer to work at the subject pole.

60. Zito was aware that it failed to obtain the proper permit before authorizing Mr. Forlina and/or his employer to work at the subject pole.

61. By authorizing, directing, requesting and/or instructing Mr. Forlina and/or his employer to begin working to attach fiber optics at the subject pole without obtaining a permit, Zito knew that Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company had not performed make-ready work to the subject pole.

62. The make-ready work that was required for this pole included the raising of the neutral to allow the appropriate clearance on the pole for the desired fiber attachment.

63. This make-ready work should have been completed before the permit would be given/provided.

64. This make-ready work had not been performed.

65. In fact, Zito's corporate designee, Ms. Kelly Ragosta, testified as follows:

Q. You would agree with me, wouldn't you, that either you have to have something in writing from Penelec to have a temporary attachment or the permit actually provided to go ahead and do your construction.

Is that correct?

A. That's correct.

Q. In this particular case, you had neither.

Am I right?

A. That's correct.

66. Zito did not inform Mr. Forlina or his employer that make-ready work had not been completed at the subject pole.

67. Zito did not inform Mr. Forlina or his employer that a permit had not been obtained allowing work to be performed at the subject pole.

68. Despite the overwhelming lack of inspections, upkeep, maintenance and/or repair performed by Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company at the subject pole in the years preceding this incident, Zito's actions deprived those Defendants of one final opportunity to notice and/or ameliorate the above described deficiency(ies) and/or dangerous condition(s).

69. The work that was being performed by Mr. Forlina and/or his employer is not the type of work that is performed by Zito in its regular course of business. In fact, Mr. McManus, the Outside Plant Manager that manages the fiber builds for commercial customers for Zito testified as follows:

Q. So it is my understanding that at the time of this incident, Mr. Forlina and his crew were running strand ultimately trying to attach fiber to the pole. Is that what you understand?

A. That's correct.

Q. Is that something that TelPower at that time generally performed itself?

A. Yes.

Q. Okay.

Is that something Zito generally performed itself at that time?

A. No, we do not.

Q. Okay.

So that wasn't part of Zito's regular course of business at that time.

Is that correct?

A. That's correct.

70. Despite not having the proper authorization to proceed with working on the subject pole, Zito authorized, directed, requested and/or instructed Mr. Forlina and/or his employer to begin working to attach fiber optics at the subject pole.

71. Zito made the decision to proceed with the installation of fiber despite the absence of proper permission because Defendant FirstEnergy Corp., t/d/b/a Penelec and/or Defendant Pennsylvania Electric Company was behind in completing its make-ready work.

72. It is believed and therefore averred that Zito made the decision to proceed as mentioned above because it would be subject to large contractual penalties with its end customer if the fiber was not attached by a certain date.

73. It is believed and therefore averred that Zito made the decision to value profits over the safety of people generally and, ultimately, Mr. Forlina specifically.

74. Zito failed to notice, acknowledge, remedy and/or report the existence of the previously described deficiency(ies) and/or dangerous condition(s).

75. The injuries and damages set forth below were caused and/or contributed to by, and were the direct and proximate result of, the negligent and/or careless conduct and/or inaction of Zito as set forth above, below, and in the following additional particulars:

- a. In failing to properly and/or appropriately inspect the premises and/or Subject Components to ensure the safety of people in proximity thereto;

- b. In failing to reasonably, properly and/or appropriately inspect the premises and/or Subject Components as part of the make-ready inspection and/or process;
- c. In allowing the situation to exist whereby the guy wire could become slack when simply touched and/or grasped by an individual;
- d. In authorizing, directing, requesting and/or instructing Mr. Forlina and/or his employees to begin working to attach fiber optics at the subject pole before make-ready work had been performed; and
- e. In authorizing, directing, requesting and/or instructing Mr. Forlina and/or his employees to begin working to attach fiber optics at the subject pole before receiving a permit and/or other valid authority from Defendant FirstEnergy Corp., t/d/b/a/ Penelec and/or Defendant Pennsylvania Electric Company.

76. Pennsylvania law recognizes that electricity is a dangerous instrumentality no matter where it is located, and further recognizes that it is a source of grave peril.

77. Pennsylvania law also establishes that anyone who provides, supplies, or uses an inherently dangerous instrumentality, such as high voltage electric current, is required to use the highest degree of care practicable to avoid injury to everyone who may be lawfully in the area of such activity.

78. Zito knew or should have known that any and/or all of the above-described conditions, failures, actions and/or inactions would create a high degree of risk of harm to Plaintiff Thomas Forlina and others at the premises.

79. Zito's actions were a direct and proximate cause of the injuries and damages as set forth below.

80. As a result of the aforesaid incident, Plaintiff Thomas Forlina has suffered, among other things, the following injuries:

- a. Full thickness, third degree electrical burn ulcer with necrosis to due to exit wound from electrocution to the distal medial aspect of his left foot, requiring incision and

surgical debridement of wound eschar to his left foot with wound VAC dressing application;

- b. Palpation to his left foot, particularly in the periwound area, with significant edema to his left foot;
- c. Follow-up procedures of irrigation and debridement of wound and VAC dressings and follow-up wound closure;
- d. Severe pain and discomfort to his left foot and toes;
- e. Severe injury to his left foot and toes;
- f. Deep, full thickness 2nd degree to his left hand, together with deep areas of burn to the palmar aspect of the digits of the left hand, due to entry wound from electrocution, requiring daily santyl poly dressings and hydrotherapy for management of his left palmar burn;
- g. Severe pain and discomfort to his left hand and digits/fingers;
- h. Severe injury to his left hand and digits/fingers;
- i. Shock and loss of consciousness due to electrocution;
- j. Severe pain and discomfort to his head due to the fall after electrocution;
- k. Severe injury to his head;
- l. Loss of hearing;
- m. Anxiety, insomnia/sleep difficulty, mood swings, and depression;
- n. Severe emotional distress and shock to his nerves and nervous system;
- o. Other injuries and damages recoverable at law; and,
- p. Some or all of the above injuries may be permanent in nature.

81. As a result of the aforesaid injuries, Plaintiff Thomas Forlina has suffered the following damages:

- a. He has incurred in the past, and will incur in the future, substantial medical expenses;

- b. He has suffered in the past, and will suffer in the future, substantial pain, suffering, and inconvenience and the loss of certain of the ordinary pleasures of life;
- c. He has sustained in the past, and may sustain in the future, substantial scarring and disfigurement;
- d. He has sustained, and may sustain in the future, loss of earnings and/or earning capacity; and
- e. He has sustained in the past, and will sustain in the future, other emotional, economic and physical harm.

WHEREFORE, Plaintiff Thomas Forlina demands judgment against Defendant Zito, LLC, i/t/d/b/a Zito Media, L.P., Defendants, along with fees, costs and interest, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

COUNT IV – LOSS OF CONSORTIUM

SHARON FORLINA, PLAINTIFF,

VS.

ZITO, LLC i/t/d/b/a ZITO MEDIA, L.P., DEFENDANTS

82. Each of the above paragraphs is incorporated herein by reference.

83. At all times relevant hereto Plaintiff Sharon Forlina was married to, and resided with, Plaintiff, Thomas Forlina.

84. As a result of the injuries to her spouse, Plaintiff Sharon Forlina has lost the society, comfort and services of her spouse.

85. As a result of the injuries to her spouse, Plaintiff Sharon Forlina has in the past and/or may in the future be required to expend substantial sums of money for her husband's medical and other health-care expenses.

86. As a result of the injuries to her spouse, Plaintiff Sharon Forlina has in the past and/or may in the future incur loss of wages and/or other economic losses.

WHEREFORE, Plaintiff Sharon Forlina demands judgment against Defendant Zito, LLC, i/t/d/b/a Zito Media, L.P., Defendants, along with fees, costs and interest, in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

Respectfully submitted,

MARCUS & MACK, P.C.,

By: _____
Bryan S. Neiderhiser, Esquire
57 South Sixth Street, P.O. Box 1107
Indiana, PA 15701
Telephone: (724) 349-5602
Sup. Ct. ID 81496

VERIFICATION

I, Thomas Forlina, verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

Thomas Forlina

VERIFICATION

I, Sharon Forlina, verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

Sharon Forlina

IN THE COURT OF COMMON PLEAS
BLAIR COUNTY, PENNSYLVANIA

THOMAS FORLINA AND
SHARON FORLINA, HIS WIFE,

CIVIL ACTION

No. 2016 – GN - 2184

PLAINTIFFS

VS.

JURY TRIAL DEMANDED

FIRSTENERGY CORP., AN OHIO
CORPORATION, T/D/B/A PENELEC;
PENNSYLVANIA ELECTRIC COMPANY,
A PENNSYLVANIA CORPORATION;
ZITO, LLC, i/t/d/b/a ZITO MEDIA, L.P.

DEFENDANTS

VS.

ZITO MEDIA, L.P.,

ADDITIONAL DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' SECOND AMENDED COMPLAINT** was mailed, U.S. First Class mail, to the following this _____ day of _____, 2017:

Charles E. Wasilefski, Esq.
Peters & Wasilefski
2931 North Front Street
Harrisburg, PA 17110
Attorney for Original Defendants

Christopher J. Sichok, Esq.
Law Offices of Terry L.M. Bashline
6 PPG Place, Suite 750
Pittsburgh, PA 15222
Attorney for Additional Defendant, Zito Media, L.P.

ATTACHMENT E

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

ZITO CANTON, LLC,

Complainant,

v.

**PPL ELECTRIC UTILITIES
CORPORATION,**

Respondent.

**Proceeding No. 17-284
File No. EB-17-MD-005**

I, Brenda Brockman, declare as follows:

1. My name is Brenda Brockman. I am the Joint Use Manager at the Dayton Power and Light Company ("DP&L"). I make this declaration in support of PPL Electric Utilities Corporation's Response to Pole Attachment Complaint in the above-captioned proceeding.
2. DP&L is subsidiary of The AES Corporation. DP&L provides electric service to over 520,000 customers in 24 counties throughout the Miami Valley in Ohio. DP&L owns, in whole or in part, approximately 329,000 electric distribution/transmission poles.
3. DP&L charges a fee of \$110 per pole to survey and collect pole data. If engineering is required, DP&L charges a fee of \$55 per pole to engineer for make-ready work, for a grand total of \$165 per pole.
4. During pole surveys, DP&L collects the following information for each pole: GPS coordinates; the identity of pole attachers; the location and height of attachments on each pole; photographs of the pole; and maps of the pole location are created if maps provided by the attacher are insufficient.

5. Following completion of a pole survey, DP&L enters the information described in Paragraph 4 into the web-based application SPANS (Spatially-enabled Permitting and Notification System), which is an interactive database available to attachers.
6. The information described in Paragraph 4 is also entered into SPIDACalc, a pole loading analysis software, so that a pole loading analysis is done on every pole.
7. For any given pole, DP&L's survey and engineering work is completed by a single contractor.
8. DP&L's current engineering contract is three years old and the company expects its make-ready rates to increase in the near future.

I declare under penalty of perjury that the foregoing is true and correct.

By: Brenda Brockman

Brenda Brockman
Joint Use Manager
Dayton Power and Light Company

Dated: November 16, 2017

SUBSCRIBED AND SWORN to before me
on this 16 day of NOVEMBER, 2017.



Claudius R. Walker III

Notary Public
CLAUDIUS R WALKER III, Notary Public
In and for the State of Ohio
My Commission Expires Sept. 28, 2021

My commission expires: _____

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

ZITO CANTON, LLC,

Complainant,

v.

**PPL ELECTRIC UTILITIES
CORPORATION,**

Respondent.

**Proceeding No. 17-284
File No. EB-17-MD-005**

I, Samantha Cook, declare as follows:

1. My name is Samantha Cook. I am an Engineering Tech at Baltimore Gas and Electric Company (“BGE”). I make this declaration in support of PPL Electric Utilities Corporation’s Response to Pole Attachment Complaint in the above-captioned proceeding.
2. BGE provides electric service to more than 1.2 million customers and natural gas to over 650,000 customers in Maryland. BGE owns, in whole or in part, approximately 360,000 electric distribution poles.
3. BGE hires engineering contractors to perform pre-attachment surveys and engineering design work for new pole attachment requests.
4. During pole surveys, BGE’s engineering contractors collect the following information for each pole: the location of each pole using Geographic Information System (“GIS”) technology; the identity of pole attachers; the location and height of attachments on each pole; and measurements of mid-span clearances.

5. BGE's contractor uploads the information identified in Paragraph 4 to an interactive database and the data becomes part of the electronic job file for the request.
6. A pole loading study is done on every pole using Pole Foreman.
7. BGE requires attachers to provide photographs and stick drawings for each pole. If the stick drawings are inadequate or the photographs are missing, BGE denies the application and returns it to the customer.
8. BGE has never calculated the per pole cost for this survey and engineering work.

I declare under penalty of perjury that the foregoing is true and correct.

By: 

Samantha Cook
Engineering Tech
Baltimore Gas & Electric

Dated: November 20, 2017

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

ZITO CANTON, LLC,

Complainant,

v.

**PPL ELECTRIC UTILITIES
CORPORATION,**

Respondent.

**Proceeding No. 17-284
File No. EB-17-MD-005**

I, Jodi Corrow, declare as follows:

1. My name is Jodi Corrow. I am the Senior Distribution Assets Coordinator at Minnesota Power. I make this declaration in support of PPL Electric Utilities Corporation's Response to Pole Attachment Complaint in the above-captioned proceeding.
2. Minnesota Power is a utility company based in Duluth, Minnesota. Minnesota Power provides electricity in a 26,000 square-mile service area in northeastern Minnesota. The company serves approximately 145,000 residential and commercial customers.
3. Minnesota Power provides new attachers with an estimate of pre-engineering fees; and an estimate of post-engineering fees. The combined pre-engineering and post-engineering fees are typically \$250 to \$300 per pole.
4. The fees identified in Paragraph 3 are collected from attachers up front. Once the permit is completed Minnesota Power does a true up and if needed, either refunds or sends an invoice to the attacher for additional expenses.
5. The fee estimates described in Paragraph 3 are collected regardless of whether Minnesota Power completes engineering work or has a contractor perform the work.

6. During pole surveys, Minnesota Power collects the following information for each pole: field measurements that include pole locations; the height of existing pole attachments; measurements of the clearances on the pole and at mid-span; measurements of down guys; an inventory and identification of unauthorized attachments; and photographs of the pole and existing attachments.
7. Following completion of a pole survey, Minnesota Power enters the information described in Paragraph 6 into its online notification system called Notify.
8. A pole loading study is performed on all surveyed poles using O-Calc Pro.
9. All information described in Paragraph 6 is covered by Minnesota Power's pre-engineering fees.
10. Minnesota Power's post-engineering fee covers spot-checks designed to confirm that attachers have properly installed equipment. Post-engineering surveys are completed on approximately 10 percent of Minnesota Power's poles. If Minnesota Power determines that an attacher has committed a violation, it performs a survey of all poles the attacher has attached to for that license.
11. Minnesota Power performs the pre-engineering and post-engineering survey activities described herein in-house, but can hire an engineering firm for larger orders if necessary.

I declare under penalty of perjury that the foregoing is true and correct.

By: 

Jodi Corrow
Senior Distribution Assets Coordinator
Minnesota Power

Dated: November 20, 2017

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

ZITO CANTON, LLC,

Complainant,

v.

**PPL ELECTRIC UTILITIES
CORPORATION,**

Respondent.

**Proceeding No. 17-284
File No. EB-17-MD-005**


I, Diana Gaiser, declare as follows:

1. My name is Diana Gaiser. I am the Senior Real Estate Representative at PECO. I make this declaration in support of PPL Electric Utilities Corporation's Response to Pole Attachment Complaint in the above-captioned proceeding.
2. PECO provides electric service to more than 1.6 million customers in Pennsylvania. PECO owns, in whole or in part, approximately 415,000 electric distribution poles.
3. PECO hires engineering contractors to perform make-ready surveys and engineering design work for new pole attachment requests.
4. During pole surveys, PECO collects the following information for each pole: GPS coordinates; the identity of pole attachers; the location and height of attachments on each pole; the class of the pole; and measurements of midspan clearances.
5. PECO performs a pole loading study for each pole surveyed using Pole Foreman.
6. Following each pole survey, PECO's engineering contractor creates a make-ready design and provides the attacher with a make-ready estimate. All costs of the survey and make-

ready process (including contractor fees) are passed on to the attacher, which amounts to approximately \$110/pole.

7. PECO plans to acquire an information gathering system that will provide an interactive solution for entering and storing pole survey data.

I declare under penalty of perjury that the foregoing is true and correct.

By: 

Diana Gaiser
Senior Real Estate Representative
PECO

Dated: November 16, 2017

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

ZITO CANTON, LLC,

Complainant,

v.

**PPL ELECTRIC UTILITIES
CORPORATION,**

Respondent.


**Proceeding No. 17-284
File No. EB-17-MD-005**

I, Leila Hussein, declare as follows:

1. My name is Leila Hussein. I am Supervisor of Joint Facilities Coordination at Alliant Energy ("Alliant"). I make this declaration in support of PPL Electric Utilities Corporation's Response to Pole Attachment Complaint in the above-captioned proceeding.
2. Alliant is an electric utility company headquartered in Madison, Wisconsin. Alliant provides electric service to more than 950,000 customers in Iowa and Wisconsin. Alliant owns over 42,000 miles of electric lines.
3. Alliant hires engineering contractors to perform make-ready surveys and engineering design work for new pole attachment requests.
4. During pole surveys, Alliant's engineering contractor collects the following information for each pole: Pole identification numbers, GPS coordinates; the identity of pole attachers; the location and height of attachments on each pole; the class of the pole; measurements of midspan clearances; measurements of the length and direction of all cables, road crossings, railroad crossings, anchoring, risers, and grounds; and takes photographs.

5. Following each pole survey, Alliant's engineering contractor performs a pole loading study for each surveyed pole using the structural analysis software *O-Calc Pro*. A clearance analysis is also completed to ensure NESC compliance on existing and proposed facilities.
6. Alliant's engineering contractor creates a make-ready design and estimate and submits it to Alliant's Field Engineer for review. Following review, Alliant's engineering contractor enters the make-ready work and an estimate of costs in the Alliant Energy Attachment Tracking system for review and approval by the Attacher. After the design is accepted and the estimate is paid by the Attacher, the Alliant engineering contractor completes the design and submits the project to Alliant's Field Engineer for construction.
7. All of these survey and engineering activities described herein are passed through to attachers.

I declare under penalty of perjury that the foregoing is true and correct.

By: 
Leila Hussein
Supervisor of Joint Facilities Coordination
Alliant Energy

Dated: November 20, 2017

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ZITO CANTON, LLC,

Complainant,

v.

**PPL ELECTRIC UTILITIES
CORPORATION,**

Respondent.

**Proceeding No. 17-284
File No. EB-17-MD-005**

I, Carol Vallejo, declare as follows:

1. My name is Carol Vallejo. I am the Manager of Contract Operations and Kansas City Power and Light ("KCP&L"). I make this declaration in support of PPL Electric Utilities Corporation's Response to Pole Attachment Complaint in the above-captioned proceeding.
2. KCP&L is an electric utility company headquartered in Kansas City, Missouri. KCP&L provides electric service to more than 800,000 customers in Kansas and Missouri. KCP&L owns, in whole or in part, approximately 555,000 electric distribution poles.
3. KCP&L-approved engineering contractors perform make-ready field surveys, pole loading analyses, and engineering design work for new pole attachment requests.
4. During pole surveys, KCP&L's contractor collects the following information for each pole: GPS coordinates; the identity of pole attachers; the location and height of attachments on each pole; the class of the pole; measurements of midspan clearances; measurements the electric power primaries, secondaries, and service drops, as well as trunk lines, laterals, and service drops of communications facilities; and photographs of each pole.

5. KCP&L's engineering contractor has access to the company's database so it can confirm each pole number, coordinates, and pole attributes. All collected information identified in Paragraph 4 is uploaded to the database which contains an interactive map.
6. Following each pole survey, KCP&L's engineering contractor performs a pole loading study for each surveyed pole using structural analysis software such as *PLS-Pole*, *O-Calc Pro*, or another approved pole loading software. A Professional Engineer stamp is provided on every job print.
7. KCP&L's pre-engineering costs are passed through to the attacher. No fees are added by KCP&L for this process.

I declare under penalty of perjury that the foregoing is true and correct.

By: Carol Vallejo

Carol Vallejo
Manager of Contract Operations
Kansas City Power and Light

Dated: November 16, 2017

ATTACHMENT F

Chumrik, Robert

From: Chumrik, Robert
Sent: Monday, April 17, 2017 11:35 AM
To: 'Kelly Ragosta'
Cc: DeWitt, Deanna R; Schafer, Stephen F
Subject: Recent Zito Proposals

Kelly:

I have noticed over the past month Zito has initiated a large group of new proposals in SPANS. At last count the numbers of poles involved was near 1100 poles. We will be turning this over to Sigma for processing. For information purposes we have been averaging about \$230 per pole. This is based off of pole field review and design. With the number of poles involved just a quick estimate would show engineering for the make ready would be, \$250,000, approximately. Final cost will be based on actual time spend preparing these poles. Reduction in the number of poles submitted or the number of poles that have complex designs involved with them would reduce the average cost per pole.

Please review with your field / site people and let me know if there are any of the proposals you would like Penelec to return for further Zito review. I will be submitting these proposal by the end of this week.

Thank You

Bob Chumrik

ATTACHMENT G

Endris, Robert M

From: Schafer, Stephen F
Sent: Tuesday, September 05, 2017 11:19 AM
To: Colin Higgin
Cc: Pryatel, Thomas R.; Chumrik, Robert; DeWitt, Deanna R; Endris, Robert M; Cunningham, Wallace W; Chipps, Jamie; Ryan Hetrick; Kelly Ragosta; Coleman, Randal J.; todd.mcmanus@zitomedia.com; Kelly Ragosta; Lawrence M. Denef
Subject: RE: Zito --face to face meeting
Attachments: Checklist - High Cost M-R Poles - Sep 2017.pdf

Good morning Colin

Attached is the checklist that we committed to provide (see #2 below). Please contact me if you have questions or need additional information.

Steve

Stephen F. Schafer

Manager, Joint Use & Cable Locating
Energy Delivery - Operations Services
FirstEnergy Services Company
76 South Main Street A-GO-11
Akron, Ohio 44308
330.384.3711
SSchafer@FirstEnergyCorp.com

From: Schafer, Stephen F
Sent: Tuesday, August 01, 2017 4:27 PM
To: Colin Higgin <colin.higgin@zitomedia.com>
Cc: Pryatel, Thomas R. <pryatelt@firstenergycorp.com>; Chumrik, Robert <rchumrik@firstenergycorp.com>; DeWitt, Deanna R <ddewitt@firstenergycorp.com>; Endris, Robert M <rendris@firstenergycorp.com>; Cunningham, Wallace W <wcunningham@firstenergycorp.com>; Chipps, Jamie <chippsj@firstenergycorp.com>; Ryan Hetrick <RHetrick@teamsigma.com>; Kelly Ragosta <kelly.ragosta@zitomedia.com>; Randal J. Coleman (colemanr@firstenergycorp.com) <colemanr@firstenergycorp.com>
Subject: RE: Zito --face to face meeting

Colin

Thank you for taking time to meet with us on Tuesday 7/25 in Erie. In response to your offer to pay open engineering make-ready invoices, to have Penelec use Zito Pole Profile Sheets (instead of Penelec or Sigma) for make-ready engineering, and to have Zito pay \$88 per hour for ride-outs with Sigma, we acknowledge Zito's desire to control costs and want to work together with you to meet both of our needs. Penelec / FirstEnergy offers the following:

1. Zito may ride-out with Sigma for \$88 per hour. However, as we discussed last week, poles will not be engineered in the field, nor are we able to provide cost estimates during ride-outs.
2. We will provide a checklist for Zito to use as a guide to identify high-cost make-ready poles. This should aide Zito in the identification of low-cost routes prior to submitting the SPANS Proposal, thereby avoiding the more-costly engineering make-ready poles. This may also save time and cost by reducing the need for Zito to remove poles from already-submitted proposals in SPANS.
3. We will provide a personal SPANS training session by Wind Lakes Solutions for Kelly Regosta and other Zito staff members.

4. Zito may at its discretion discontinue submitting Pole Profile Sheets for any proposals that will be engineered by Sigma Technologies. Detailed engineering will continue to be provided by Sigma Technologies or Penelec Engineering.
5. We will consider allowing additional temporary attachments on a project-by-project basis, provided Zito has paid all make-ready invoices.

Steve

Stephen F. Schafer

Manager, Joint Use & Cable Locating
Energy Delivery - Operations Services
FirstEnergy Services Company
76 South Main Street A-GO-11
Akron, Ohio 44308
330.384.3711
SSchafer@FirstEnergyCorp.com

EXHIBIT 1

Typical High Make Ready Cost Poles

Below are some situations where make-ready costs could be high due to the need to replace the pole. This is not intended to be all-inclusive, but avoiding these situations would lead to lower overall costs.

- Sub-transmission or transmission pole replacements. Sub-T and transmission can be identified by the following characteristics: Taller Poles and longer insulators
- Steel poles, if replaced, cost much more than wood.
- Poles with multiple 3-phase circuits (i.e. multiple crossarms).
- Grade B pole replacements (e.g. highway, water, railroad crossings).
- Primary pole with greater than 3 communications attachments or 3 pieces of power equipment (e.g. transformers, reclosers, capacitors, cutouts).
- Primary pole that any has communications attachments and an underground feed attached to the pole.
- 3-phase primary pole that has any communications attachments and power equipment (e.g. transformers, reclosers, capacitors, cutouts, wireless equipment).
- Poles at congested intersections (e.g. traffic signals, streetlights).
- Secondary pole with open wire secondary conductor and any communications attachment.
- Pole replacements with a high amount of tree work or additional right-of-way requirements. For example, tree work may be required when the additional height encroaches into a new tree canopy envelope. Tree work required outside of the existing trim cycle to accommodate construction is billable. Construction cannot be completed until a safe distance to vegetation has been established.

ATTACHMENT H

Chumrik, Robert

From: Chumrik, Robert
Sent: Friday, October 27, 2017 8:15 AM
To: 'Kelly Ragosta'
Cc: Prindle, Rick; DeWitt, Deanna R; Schafer, Stephen F; Cunningham, Wallace W; Gerry Kane; Todd; George Goodling; Joe Laubach; Colin Higgin; James Rigas; Karina Valenti
Subject: RE: *EXTERNAL* Request for engineering detail on pole replacements & SPANs clarification

Kelly:

I have reviewed the 10 poles that you sent photos of; thanks for putting them in SPANS notes. I did find that those replacements were classified during engineering as Company betterment to Penelec, those costs were removed at that time and therefore were not included in the estimates you received. Below is a summary of the impact of those removals.

-Proposal 20170324.2 We removed 28% of the total cost of the construction estimate

-Proposal 20170324.3 We removed 43% of the total cost of the construction estimate.

Removal of these Company betterment replacement poles also included a reduction of the engineering cost associated with the projects; therefore, you also were not charged for corresponding engineering costs associated with construction classified as Company betterment

In accordance with Steve Schafer's letter to Mr. Rigas, I am currently working with Sigma to develop a detailed engineering drawing package following the example you sent us from Ohio Edison. Our plan will be to send this drawing package as an attachment to the SPANS estimate proposal. We also envision including documentation denoting company betterment that should help avoid any further confusion. Please let me know if you have any questions.

Bob

-----Original Message-----

From: Kelly Ragosta [mailto:kelly.ragosta@zitomedia.com]
Sent: Friday, September 22, 2017 4:13 PM
To: Chumrik, Robert <rchumrik@firstenergycorp.com>
Cc: Prindle, Rick <rprindle@firstenergycorp.com>; DeWitt, Deanna R <ddewitt@firstenergycorp.com>; Schafer, Stephen F <sschafer@firstenergycorp.com>; Cunningham, Wallace W <wcunningham@firstenergycorp.com>; Gerry Kane <gerry.kane@zitomedia.com>; Todd <todd.mcmanus@zitomedia.com>; George Goodling <george.goodling@zitomedia.com>; Joe Laubach <joe.laubach@zitomedia.com>; Colin Higgin <colin.higgin@zitomedia.com>; James Rigas <james.rigas@zitomedia.com>; Karina Valenti <karina.valenti@zitomedia.com>
Subject: *EXTERNAL* Request for engineering detail on pole replacements & SPANs clarification

Bob,

I have attached photos of 10 poles on applications 20170324.2 & 20170324.3. All of these poles are listed as "will replace pole" in SPANs. These photos were taken yesterday as part of a field review to determine if Zito can do anything to avoid these pole replacements.

On all but one of these poles, there are no attachments other than power. We do not understand why Penelec wants to replace them. Please provide the engineering analysis to support the decision for these replacements.

As far as acknowledging the poles in SPANs, if we choose "don't agree" on these individual pole replacements, will that hold up the scheduling of the make-ready?

The payment for all of these applications was delivered to you via fedex on 9/21/17:

20170303.1, 20170303.2, 20170317.7, 20170317.8, 20170317.9, 20170320, 20170322, 20170322.1, 20170324, 20170324.1, 20170324.2, 20170324.3

Please address our outstanding request for temporary attachments on these applications and also let us know when we can expect to see our other outstanding applications transmitted back to us for acknowledgment.

Thanks.

Kelly

ATTACHMENT I

Endris, Robert M

From: Kelly Ragosta <kelly.ragosta@zitomedia.com>
Sent: Thursday, June 22, 2017 4:25 PM
To: Schafer, Stephen F; Endris, Robert M; DeWitt, Deanna R; Chumrik, Robert; Cunningham, Wallace W
Cc: Colin Higgin; James Rigas; todd.mcmanus@zitomedia.com; Lawrence M. Denef; Gerry Kane
Subject: *EXTERNAL* Fwd: OhEd documentation
Attachments: BS-CON (Zito Media-Northeast OH Fiber Ring, Seg #2).pdf; Zito Media - Northeast OH Fiber Ring - Seg #2 PRELIM DESIGN.pdf; Ohio Edison Make Ready Invoices rev120919.xls

Good afternoon,

Larry Denef had mentioned on our call(s) that we'd gotten specific designs with details by pole from Ohio Edison and that the engineering cost/pole was well below the ~\$250 per pole cost.

I've attached an example of one of those designs showing make ready requirements by pole and a spreadsheet showing the engineering costs at ~\$79/pole.

Thanks.

Kelly

----- Forwarded Message -----

Subject: OhEd documentation

Date: Thu, 22 Jun 2017 11:56:03 -0400

From: Lawrence M Denef <larry.denef@zitomedia.com>

To: 'Colin Higgin' <colin.higgin@zitomedia.com>, James Rigas <james.rigas@zitomedia.com>

CC: Gerry Kane <gerry.kane@zitomedia.com>, Kelly Ragosta <kelly.ragosta@zitomedia.com>

EXHIBIT 1



ZITO MEDIA
NE OHIO/ NW PENNSYLVANIA FIBER NETWORK
OHIO EDISON MAKE READY INVOICES



Date Received	Segment #	SPANS Proposal #	Total Poles	Revised Poles	MR Poles	MR Cost	Eng Cost	Total Cost	based on total cost and total poles		based on total poles		based on total poles		based on MR poles only	
									Avg/Total Pole	Avg MR/Total Pole	Avg Eng/Total Pole	Avg Eng/Total Pole	Avg Eng/Total Pole	Avg MR/Total Pole	Avg MR/Total Pole	Avg MR/Total Pole
08/04/11	1	20110110.1	42		42	\$ 36,145.00	\$ 3,329.34	\$ 39,474.34	\$ 939.87	\$ 860.60	\$ 79.27	\$ 79.27	\$ 79.27	\$ 860.60	\$ 860.60	\$ 860.60
10/17/11	2	20110110.2	61		21	\$ 41,533.00	\$ 4,835.47	\$ 46,368.47	\$ 760.14	\$ 680.87	\$ 79.27	\$ 79.27	\$ 79.27	\$ 680.87	\$ 1,977.76	\$ 1,977.76
10/17/11	3	20110111.3	22		11	\$ 10,168.00	\$ 1,743.94	\$ 11,911.94	\$ 541.45	\$ 462.18	\$ 79.27	\$ 79.27	\$ 79.27	\$ 462.18	\$ 924.36	\$ 924.36
11/29/11	4	20110111.4	41		24	\$ 22,965.00	\$ 3,250.07	\$ 26,215.07	\$ 639.39	\$ 560.12	\$ 79.27	\$ 79.27	\$ 79.27	\$ 560.12	\$ 956.88	\$ 956.88
11/29/11	5	20110111.5	41		17	\$ 10,175.00	\$ 3,250.07	\$ 13,425.07	\$ 327.44	\$ 248.17	\$ 79.27	\$ 79.27	\$ 79.27	\$ 248.17	\$ 598.53	\$ 598.53
11/29/11	6	20110111.6	25		15	\$ 17,700.00	\$ 1,981.75	\$ 19,681.75	\$ 787.27	\$ 708.00	\$ 79.27	\$ 79.27	\$ 79.27	\$ 708.00	\$ 1,180.00	\$ 1,180.00
01/09/12	7	20110111.7	49		41	\$ 21,343.00	\$ 3,884.23	\$ 25,227.23	\$ 514.84	\$ 435.57	\$ 79.27	\$ 79.27	\$ 79.27	\$ 435.57	\$ 520.56	\$ 520.56
01/09/12	8	20110111.8	48		47	\$ 33,490.00	\$ 3,804.96	\$ 37,294.96	\$ 776.98	\$ 697.71	\$ 79.27	\$ 79.27	\$ 79.27	\$ 697.71	\$ 712.55	\$ 712.55
01/09/12	9	20110111.9	37		17	\$ 15,720.00	\$ 2,932.99	\$ 18,652.99	\$ 504.13	\$ 424.86	\$ 79.27	\$ 79.27	\$ 79.27	\$ 424.86	\$ 924.71	\$ 924.71
01/09/12	10	20110112.1	41		30	\$ 12,840.00	\$ 3,250.07	\$ 16,090.07	\$ 392.44	\$ 313.17	\$ 79.27	\$ 79.27	\$ 79.27	\$ 313.17	\$ 428.00	\$ 428.00
02/01/12	11	20110113.12	46		26	\$ 21,060.00	\$ 3,646.42	\$ 24,706.42	\$ 537.10	\$ 457.83	\$ 79.27	\$ 79.27	\$ 79.27	\$ 457.83	\$ 810.00	\$ 810.00
02/01/12	12	20110114.13	55		23	\$ 22,780.00	\$ 4,359.85	\$ 27,139.85	\$ 493.45	\$ 414.18	\$ 79.27	\$ 79.27	\$ 79.27	\$ 414.18	\$ 990.43	\$ 990.43
02/13/12	13	20110114.14	50		19	\$ 12,500.00	\$ 3,963.50	\$ 16,463.50	\$ 329.27	\$ 250.00	\$ 79.27	\$ 79.27	\$ 79.27	\$ 250.00	\$ 657.89	\$ 657.89
03/23/12	14	20110114.15	51		25	\$ 13,515.00	\$ 4,042.77	\$ 17,557.77	\$ 344.27	\$ 265.00	\$ 79.27	\$ 79.27	\$ 79.27	\$ 265.00	\$ 540.60	\$ 540.60
05/08/12	15	20110114.16	33		13	\$ 11,425.00	\$ 2,615.91	\$ 14,040.91	\$ 425.48	\$ 346.21	\$ 79.27	\$ 79.27	\$ 79.27	\$ 346.21	\$ 878.85	\$ 878.85
05/08/12	16	20110118.17	48		21	\$ 34,735.00	\$ 3,804.96	\$ 38,539.96	\$ 802.92	\$ 723.65	\$ 79.27	\$ 79.27	\$ 79.27	\$ 723.65	\$ 1,654.05	\$ 1,654.05
05/08/12	17	20110118.18	46		0	\$ 606.00	\$ 3,646.42	\$ 4,252.42	\$ 92.44	\$ 13.17	\$ 79.27	\$ 79.27	\$ 79.27	\$ 13.17	\$ -	\$ -
	18	20110118.19						\$ -	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
05/08/12	19	20110118.20	10		0	\$ 262.00	\$ 792.70	\$ 1,054.70	\$ 105.47	\$ 26.20	\$ 79.27	\$ 79.27	\$ 79.27	\$ 26.20	\$ -	\$ -
	20	20110118.21						\$ -	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
	21	20110118.22						\$ -	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
	22	20110118.23						\$ -	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
	23	20110118.24						\$ -	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
	24	20110119.25						\$ -	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
	25	20110119.26						\$ -	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
	26	20110119.27						\$ -	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
	27	20110119.28						\$ -	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
	28	20110119.29						\$ -	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
	29	20110119.30						\$ -	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
	30	20110119.31						\$ -	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
02/13/12	31	20110120.32	39	7	2	\$ 900.00	\$ 3,091.53	\$ 3,991.53	\$ 102.35	\$ 23.08	\$ 79.27	\$ 79.27	\$ 79.27	\$ 23.08	\$ 450.00	\$ 450.00
	32	20110120.33						\$ -	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
02/13/12	33	20110120.34	52	14	2	\$ 1,075.00	\$ 4,122.04	\$ 5,197.04	\$ 99.94	\$ 20.67	\$ 79.27	\$ 79.27	\$ 79.27	\$ 20.67	\$ 537.50	\$ 537.50
02/13/12	34	20110120.35	53	25	2	\$ 1,400.00	\$ 4,201.31	\$ 5,601.31	\$ 105.69	\$ 26.42	\$ 79.27	\$ 79.27	\$ 79.27	\$ 26.42	\$ 700.00	\$ 700.00
02/13/12	35	20110120.36	52		9	\$ 1,560.00	\$ 4,122.04	\$ 5,682.04	\$ 109.27	\$ 30.00	\$ 79.27	\$ 79.27	\$ 79.27	\$ 30.00	\$ 173.33	\$ 173.33
02/13/12	36	20110120.37	25		6	\$ 10,180.00	\$ 1,981.75	\$ 12,161.75	\$ 486.47	\$ 407.20	\$ 79.27	\$ 79.27	\$ 79.27	\$ 407.20	\$ 1,696.67	\$ 1,696.67
03/21/12	37	20110120.38	38		8	\$ 14,655.00	\$ 3,012.26	\$ 17,667.26	\$ 464.93	\$ 385.66	\$ 79.27	\$ 79.27	\$ 79.27	\$ 385.66	\$ 1,831.88	\$ 1,831.88
03/21/12	38	20110120.39	27		3	\$ 5,350.00	\$ 2,140.29	\$ 7,490.29	\$ 277.42	\$ 198.15	\$ 79.27	\$ 79.27	\$ 79.27	\$ 198.15	\$ 1,783.33	\$ 1,783.33
03/21/12	39	20110120.40	49		16	\$ 5,725.00	\$ 3,884.23	\$ 9,609.23	\$ 196.11	\$ 116.84	\$ 79.27	\$ 79.27	\$ 79.27	\$ 116.84	\$ 357.81	\$ 357.81
03/21/12	40	20110121.41	45		13	\$ 9,160.00	\$ 3,567.15	\$ 12,727.15	\$ 282.83	\$ 203.56	\$ 79.27	\$ 79.27	\$ 79.27	\$ 203.56	\$ 704.62	\$ 704.62
	41	20110121.42						\$ -	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
	42	20110121.43						\$ -	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
	43	20110121.44						\$ -	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
	44	20110121.45						\$ -	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
03/23/12	45	20110124.46	44		3	\$ 2,135.00	\$ 3,487.88	\$ 5,622.88	\$ 127.79	\$ 48.52	\$ 79.27	\$ 79.27	\$ 79.27	\$ 48.52	\$ 711.67	\$ 711.67
03/23/12	46	20110124.47	43		9	\$ 7,935.00	\$ 3,408.61	\$ 11,343.61	\$ 263.80	\$ 184.53	\$ 79.27	\$ 79.27	\$ 79.27	\$ 184.53	\$ 881.67	\$ 881.67
04/16/12	47	20110124.48	43		7	\$ 2,985.00	\$ 3,408.61	\$ 6,393.61	\$ 148.69	\$ 69.42	\$ 79.27	\$ 79.27	\$ 79.27	\$ 69.42	\$ 426.43	\$ 426.43
04/16/12	48	20110124.49	45		11	\$ 8,100.00	\$ 3,567.15	\$ 11,667.15	\$ 259.27	\$ 180.00	\$ 79.27	\$ 79.27	\$ 79.27	\$ 180.00	\$ 736.36	\$ 736.36
04/16/12	49	20110124.50	49		8	\$ 9,360.00	\$ 3,884.23	\$ 13,244.23	\$ 270.29	\$ 191.02	\$ 79.27	\$ 79.27	\$ 79.27	\$ 191.02	\$ 1,170.00	\$ 1,170.00
04/16/12	50	20110124.51	19		3	\$ 4,650.00	\$ 1,506.13	\$ 6,156.13	\$ 324.01	\$ 244.74	\$ 79.27	\$ 79.27	\$ 79.27	\$ 244.74	\$ 1,550.00	\$ 1,550.00
04/16/12	51	20110622.52	19		1	\$ 1,515.00	\$ 1,506.13	\$ 3,021.13	\$ 159.01	\$ 79.74	\$ 79.27	\$ 79.27	\$ 79.27	\$ 79.74	\$ 1,515.00	\$ 1,515.00

TOTALS TO DATE 1388
Per mile cost based on 37 poles/mile \$ 14,279.49
2081 total poles
Per mile cost based on 37 poles/mile wo/engineering \$ 11,346.50
Per mile cost based on 37 poles/mile engineering only \$ 2,932.99

ON HOLD

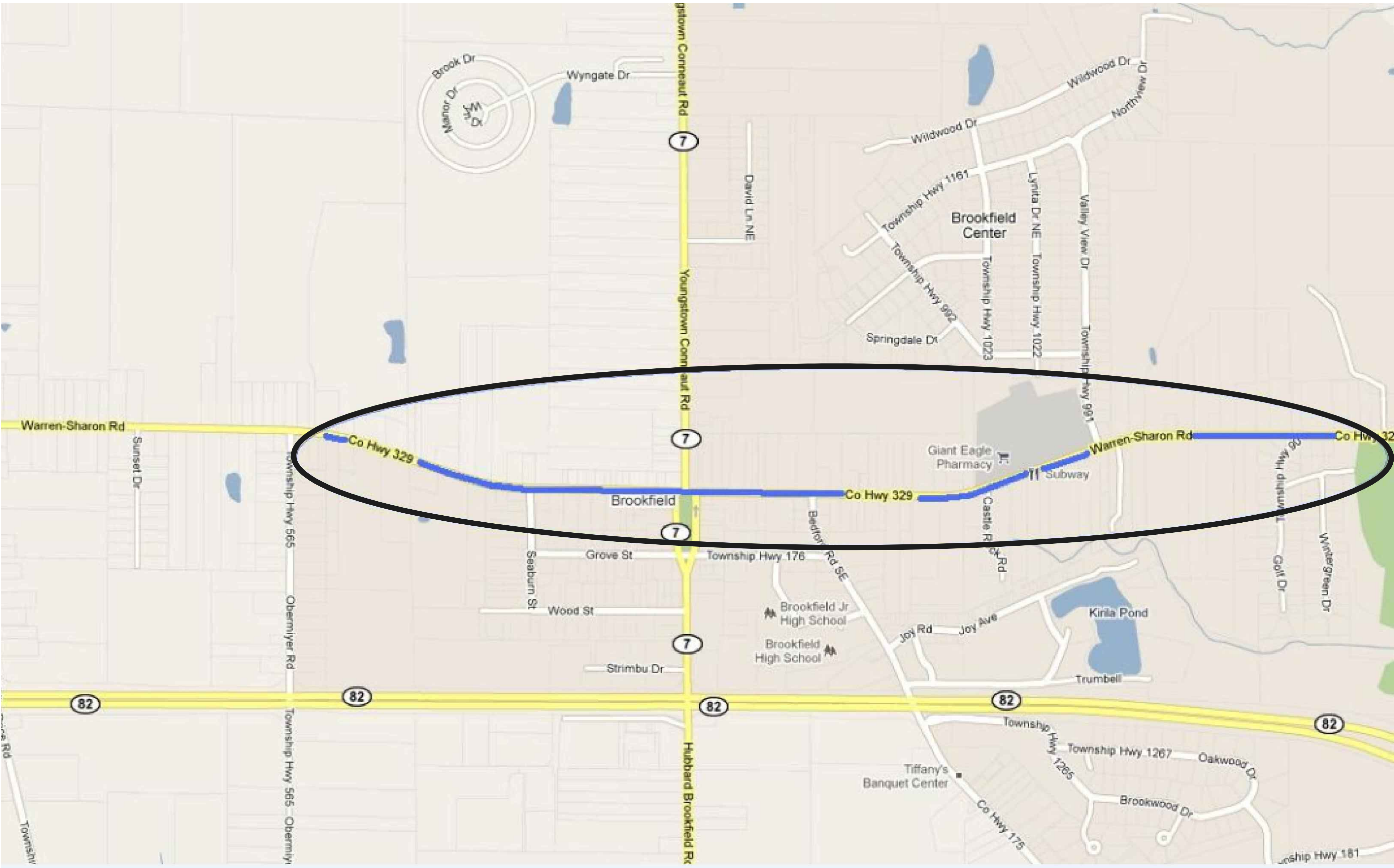
Current Invoicing

FOREIGN CO. DISTRICT WarrenDATE: October 17, 2011OHIO EDISON DIVISION Cent/AkronMake Ready Construction BILLING SUMMARY

SHEET NO: 1 OF 1

To: Kelly Ragosta Zito Media Communications 611 Vader Hill Rd. Coudersport, PA 16915 814-260-9575 (x133) kelly.ragosta@zitomedia.com	Project: <u>Zito Media - Northeast OH Fiber Ring, Segment #2</u> OE WBS # OE-001139-DO-C SAP Order # 13064770 CREWS WR # 53974727	<u>SPANS Proposal</u> <u>20110110.2</u>
Make Ready Construction, Materials & Project Management Quotation Basis -- (61) poles		\$ 41,533.00 TOTAL
<p align="center">** Please review and approve estimate <u>or</u> request a revision in SPANS (https://ohio.wlsspans.com) To expedite service you may remit payment to the address below for the total amount shown</p> <p align="center">Ohio Edison ATTN: Jon Tarnowski 1910 W. Market St. A-FAIR-1 Akron, Ohio 44313 FAX: 330-436-4318</p> <p align="center">This Billing Summary is based on estimated costs and is applicable for <u>90</u> days. Ohio Edison Company reserves the right to submit a supplemental invoice for actual costs if the initial estimate is exceeded.</p> <p align="right">\$ 41,533.00 TOTAL</p>		

SUBMITTED:
OHIO EDISON COMPANY**APPROVED:**
Zito Media Communications
(NAME OF FOREIGN COMPANY)**BY:** Jon Tarnowski, Project Manager - Joint Use**BY:** Kelly Ragosta**DATE:** 10/17/11**DATE:** _____



SEGMENT 2

PRELIMINARY
NOT FOR CONSTRUCTION PURPOSES

JU Proposals	
Company	Proposal #
Zito Media	20110110.2
Time Warner	1045903
AT&T	1045904

↑
N

Revisions:

Date	Details of Revision	Initials
-	-	-
-	-	-
-	-	-
-	-	-

Notes:

- Communication cables shall be no closer than 44" from utility conductors at pole and 30" plus sag at midspan.
- All companies must identify attachments with an ID wrap.

Scope of Work:

	OE	Other	Total
Pole Count	42	19	61
New Attachments	42	19	61
Overlaid	0	0	0
Rearrangement	21	12	33
Midspan Poles	0	0	0
Pole Replacements	2	0	2

Design Date: 8/1/2011
City/Township: BROOKFIELD TRUMBULL
County: OHIO
State: OHIO

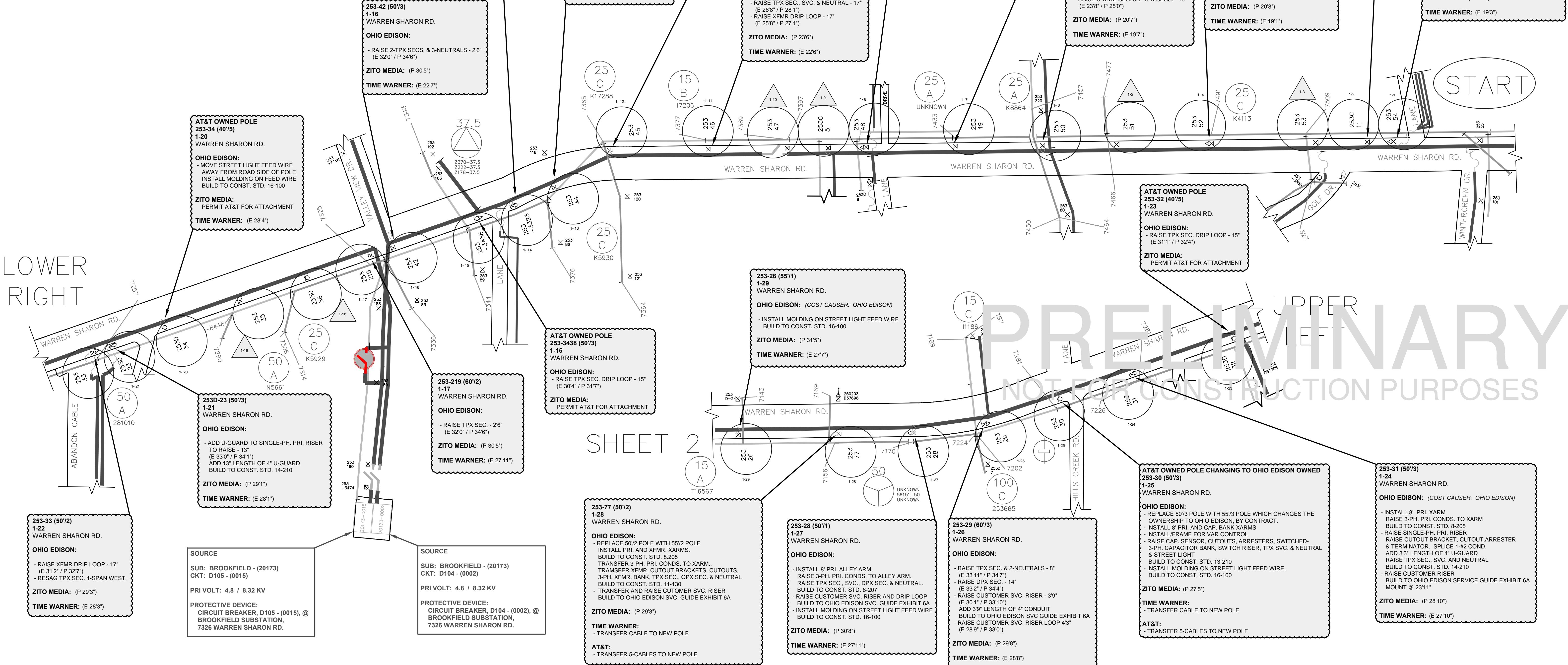
OE Proj Mgr: Jon Tamowski
Design By: Philip Benton
Crew Zone: KN044403
OE Planner: J.C. Matthews

OE Project: ZITO MEDIA-NORTHEAST OHIO FIBER RING-SEGMENT #2
WR#: 53974727

Ohio Edison
A FirstEnergy Company

SHEET OVERVIEW

New Attachment Details - Zito Media Cable Fiber			
Design #	Pole #	Attach At	Notes
1-1	253-54	203"	O.E. MAKE READY REQ'D. - TIME WARNER @ 19'3"
1-2	253C-11	204"	TIME WARNER @ 19'4"
1-3	253-53	20'10"	TIME WARNER @ 19'10"
1-4	253-52	208"	O.E. MAKE READY REQ'D. - TIME WARNER @ 19'1"
1-5	253-51	207"	TIME WARNER @ 19'7"
1-6	253-50	207"	O.E. MAKE READY REQ'D. - TIME WARNER @ 19'7"
1-7	253-49	222"	O.E. MAKE READY REQ'D. - TIME WARNER @ 21'2"
1-8	253-48	197"	O.E. MAKE READY REQ'D. - TIME WARNER @ 18'7"
1-9	253C-5	248"	TIME WARNER @ 23'8"
1-10	253-47	249"	TIME WARNER @ 23'9"
1-11	253-46	238"	O.E. MAKE READY REQ'D. - TIME WARNER @ 22'8"
1-12	253-45	228"	O.E. MAKE READY REQ'D. - TIME WARNER @ 21'8"
1-13	253-44	246"	O.E. MAKE READY REQ'D. - TIME WARNER @ 23'6"
1-14	253-3323	243"	O.E. MAKE READY REQ'D. - TIME WARNER @ 23'3"
1-15	253-3438		AT&T POLE. PERMIT AT&T FOR ATTACHMENT. O.E. MAKE READY REQ'D.
1-16	253-42	305"	O.E. MAKE READY REQ'D. - TIME WARNER @ 27'7"
1-17	253-219	305"	O.E. MAKE READY REQ'D. - TIME WARNER @ 27'11"
1-18	253-36		AT&T POLE. PERMIT AT&T FOR ATTACHMENT
1-19	253-35	28'10"	TIME WARNER @ 27'10"
1-20	253-34		AT&T POLE. PERMIT AT&T FOR ATTACHMENT. O.E. MAKE READY REQ'D.
1-21	253D-23	291"	O.E. MAKE READY REQ'D. - TIME WARNER @ 28'1"
1-22	253-33	293"	O.E. MAKE READY REQ'D. - TIME WARNER @ 28'3"
1-23	253-32		AT&T POLE. PERMIT AT&T FOR ATTACHMENT. O.E. MAKE READY REQ'D.
1-24	253-31	28'10"	O.E. MAKE READY REQ'D. - TIME WARNER @ 27'10"
1-25	253-30	275"	O.E. MAKE READY REQ'D. - TIME WARNER AND AT&T MAKE READY REQ'D.
1-26	253-29	298"	O.E. MAKE READY REQ'D. - TIME WARNER @ 28'8"
1-27	253-28	308"	O.E. MAKE READY REQ'D. - TIME WARNER @ 27'11"
1-28	253-77	293"	O.E. MAKE READY REQ'D. - TIME WARNER @ 27'7"
1-29	253-66	315"	O.E. MAKE READY REQ'D. - TIME WARNER @ 27'7"



New Attachment Details - Zito Media Cable Fiber		
Design #	Pole #	Attach At
1-30	253-25	29'10"
1-31	253-23	30'1"
1-32	253-12	27'8"
1-33	253-11	28'9"
1-34	253-7	29'7"
1-35	253-6	28'4"
1-36	253-SY-N	31'0"
1-37	253-4	28'5"
1-38	253-3	29'5"
1-39	253-1	25'0"
1-40	248-128	26'6"
1-41	248-54	25'3"
1-42	248-53	25'0"
1-43	248-52	23'2"
1-44	248-51	22'0"
1-45	248-60	
1-46	248-175	
1-47	248-49	
1-48	248-48	
1-49	248-47	
1-50	248-46	
1-51	248-45	
1-52	248-208	23'5"
1-53	248-239	22'9"
1-54	248-43	
1-55	248-42	
1-56	248-41	
1-57	248-40	
1-58	248-39	
1-59	248-38	
1-60	248-36	
1-61	248-35	

253-3 (40°/3)
1-38
 WARREN SHARON RD.

OHIO EDISON:
 - RAISE TPX SECS. 2-SVCS. & NEUTRAL - 19°

ZITO MEDIA: (P 29°5')

TIME WARNER: (E 27°5')

253-SYN (50/3)
1-36
WARREN SHARON RD.

OHIO EDISON:
- RAISE 2-TPX SECS. & SVC. - 21"
(E 33'2" / P 34'11")
- INSTALL MOLDING ON STREET LIGHT FEED WIRE
BUILD TO CONST. STD. 16-100

ZITO MEDIA: (P 31'0")

TIME WARNER: (E 27'11")

LOWER
RIGHT

SHEET 1

UPPER
LEFT

E(P)PC - Existing (Proposed) at pole clearance problem	E(P)BC - Existing (Proposed) between clearance problem	E(P)GW - Existing (Proposed) ground wire conflict
E(P)OL - Existing (Proposed) pole overload	E(P)JH - Existing (Proposed) attached to J-Hook	E(P)GA - Existing (Proposed) guy/anchor problem
E(P)GC - Existing (Proposed) ground clearance problem	E(P)NA - Existing (Proposed) not attached to pole	EXH - Excess height required



Revisions:	Date		Details of Revision		Initials	Scope of Work		OE	Other	Total
						Pole Count		17	15	32
	*	*		*		New Attachments	17	15	32	
	*	*		*		Overlash	0	0	0	
	*	*		*		Rearrangement	3	9	12	
	*	*		*		Midspan Poles	0	0	0	
	*	*		*		Pole Replacements	0	0	0	

Notes:

- Communication cables shall be no closer than 44" from utility conductors at pole and 30" plus sag at midspan.
- All companies must identify attachments with an ID wrap.

Design Date:	8/1/2011
Cty/Twnshp:	BROOKFIELD
County:	TRUMBULL
State:	OHIO

OE Proj Mgr:	Jon Tarnowski
Design By:	Philip Benton
Crew Zone:	KN044403
OE Planner:	J.C. Matthews



Ohio Edison
A FirstEnergy Company

OF Project: ZITO MEDIA-NORTHEAST OHIO FIBER RING-SEGMENT #2

SHEET 2 OF 2

ATTACHMENT J

Navigation

Alerts

SPANS Start Page

Proposals

Business Number

Go To

Search

List

Administration

Reports

System

Company

User

Information

Help

Request Support

Number: 20160406.3

Subtype: Attachment Proposal

Status: Transmitted; Pending Reply

Company	Related Proposal	Seq	By	Init	Resp	Pending	Next
	20160406.3		N/A	Zito	PH	Reply	PH

Initiating Company: Zito Media
 State: Pennsylvania
 County: Bradford
 City, Village, Township: West Burlington Township
 Responding Company: Penelac
 Location Description: 586 Kokopelli Lane (Towanda) - App 3
 Proposal Number: 20160406.3
 Project Summary: New Aerial Attachments
 Reason for Work: Reroute
 Foreign Owner Involved: Frontier Communications ILEC for PA
 Foreign Owner Involved Status: Can't be Changed: Contains Linked FRN Poles.
 Zito Actions in Proposal: Establish JU or Add Attachment
 Zito Area: Values Not Available
 Zito Work Order Number: 586 Kokopelli Lane (Towanda) - App 3
 FE Business Partner Description: Zito Media
 FE Contract # or FE CIN #: 25161
 Total Poles (Zito-owned): 0
 Total Poles (PH-owned): 38
 Total Poles (FTIPA-owned): 12

FE Policy/Safety Message

FE Policy/Safety Message Acceptance

Foreign Application Requirement

Foreign Application Requirement Acceptance

Zito Approved By

Zito Approved Date

The National Electric Safety Code (NESC) regulations (i.e. local, state, federal), and FirstEnergy policy and construction standards shall be adhered to at all times.

Attaching Party Guidelines (July 2015)

FE Billing Policy for FE Poles

Accept

Initiator must also apply to Foreign Owner Involved to request permission to attach to any/all foreign-owned poles.

Accept

Valenti, Karina 814-320-0522

4/7/2016

Attached Files

Download all as .zip file

[586 Kokopelli Lane \(Towanda\) - Penelac 20160406.3 map.pdf](#)

[586 Kokopelli Lane \(Towanda\) - Penelac 20160406.3 profiles.pdf](#)

ATTACHMENT K

Joint Use Engineering Policy

Subject: Boxing and Extension Arms

Definitions:

Pole Boxing

The term “boxing” in this document is the placement of cables, wires or messenger on opposing sides of a pole below the power space.

Extension arms

The term “extension arms” is used in this document to denote extension arms, brackets, bolts, cross-bars, straps, and any other techniques that are used to maintain, or have the effect of maintaining, some horizontal distance between an attachment and the pole.

Purpose

The purpose of this document is to communicate FirstEnergy’s policy on the use of boxing and extension arms and the circumstances under which they may be requested and approved for use on FirstEnergy poles.

Applicability

FirstEnergy’s policy applies to all FirstEnergy utilities granting pole attachment rights.

Policy

FirstEnergy’s policy is not to allow boxing or extension arms. However there may be certain limited circumstances under which FirstEnergy will evaluate requests for boxing or extension arms on a case-by-case (i.e. pole-by-pole) basis. From the issue date of this statement of policy forward, if the use of boxing or extension arms is approved by FirstEnergy, any such approval shall be made by a FirstEnergy Manager of Engineering in writing. Blanket approval shall not be granted to any attaching person, company or contractor.

Boxing and Extension Arms Create Operational Problems

FirstEnergy design and work principles intend that all poles may be climbed safely at any time, and boxing and extension arms make poles difficult to climb. For example, extension brackets and boxing may be especially hazardous where a ladder is needed. Boxing also significantly complicates the process of pole replacement because the new pole must be inserted between the boxed attachments.

Guidance

Attachment companies requesting permission to install or retain the use of boxing and / or extension arms must submit a justified explanation and listing of poles and locations to the Manager of Engineering in the applicable FirstEnergy utility. Approval for the use of boxing and extension arms shall be determined by FirstEnergy at its sole discretion, on a case-by-case (i.e. pole-by-pole) basis.

Existing boxed attachments shall not constitute consent for additional boxed attachments. Further, boxing poles and use of extension arms without FirstEnergy's expressed written consent may result in corrective action being taken for which the responsible party may be subject to make-ready costs to remedy the unauthorized attachment.

All attachments to FirstEnergy poles must meet the requirements of all applicable federal, state, county and municipal codes and regulations, the most current edition of the National Electrical Safety Code, the terms of the attacher's pole attachment agreement, joint use/ownership agreement, or FirstEnergy operating company tariff (whichever is applicable), and FirstEnergy's practices and construction standards. All attachment requests must be submitted to FirstEnergy in accordance with the approved permitting process.

This document is provided for informational purposes and is subject to change at any time.

This version supersedes and replaces all prior versions.

ATTACHMENT L

FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau
Market Disputes Resolution Division
445 12th St., SW
Washington, DC 20554

April 4, 2014

Copies by E-Mail; Original by U.S. Mail

Petition of Salsgiver Telecom, Inc.)	
for Temporary Stay Pursuant to Section)	
1.1403(d) of the Federal Communications)	File No. EB-14-MD-005
Commission Rules)	

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Counsel for Respondent

Dear Counsel:

This letter order denies the Petition for Temporary Stay that Salsgiver Telecom, Inc. (Salsgiver) filed on February 28, 2014, under Commission rule 1.1403(d), 47 C.F.R. § 1.1403(d). In short, Salsgiver seeks to stay the removal of its unauthorized attachments from poles owned by Pennsylvania Electric Company (Penelec) in Altoona, Pennsylvania. As discussed below, the Petition fails to make a showing of irreparable harm as required by Commission rule 1.1403(d).

Background

In 2007, Salsgiver entered into a pole attachment agreement with Penelec.¹ In March 2013, Salsgiver submitted applications under the parties' agreement to attach to over 190 Penelec poles in and around Altoona, Pennsylvania.² On March 27, 2013, the parties engaged in a ride-out to review the poles at issue in the application. At that time, Penelec informed Salsgiver that make-ready would be necessary

¹ Petition for Temporary Stay, File No. EB-14-MD-005 (filed Feb. 28, 2014) (Petition), Exhibit 3 (Declaration of Loren Salsgiver) (Salsgiver Decl.) at 3, para. 7.

² Petition at 5; Salsgiver Decl. at 4, para. 11.

on many of the poles before Salsgiver could attach.³ On July 30, 2013, Penelec provided Salsgiver an estimate of approximately \$20,000 for the make-ready work.⁴ But Salsgiver “determined that the make-ready proposed by Penelec” was not necessary and proceeded to attach to Penelec’s poles without permission.⁵ These unauthorized attachments are the subject of the Petition. To date, Salsgiver has not filed a complaint challenging Penelec’s pole attachment policies.

Petition for Temporary Stay

A Petition for Temporary Stay is a “form of temporary relief pending resolution by the Commission of the underlying dispute.”⁶ Section 1.1403(d) of the Commission’s rules states that a Petition for Temporary Stay “shall not be considered” unless it includes, among other things, the reasons for the relief sought “including a showing of irreparable harm and likely cessation of cable television service or telecommunication service.”⁷ The Commission “adhere[s] to a strict threshold showing” of irreparable harm and likely cessation of service, and “will not hesitate to dismiss [a Petition for Temporary Stay] where inadequate support is provided.”⁸

The Petition fails to show that Salsgiver will suffer “irreparable harm” if a stay is not granted.⁹ In order to demonstrate “irreparable harm,” a party must show that the alleged harm is “‘both certain and great; ... actual and not theoretical. ... Bare allegations of what is likely to occur’ are not sufficient, because the test is whether the harm ‘will in fact occur.’”¹⁰ Thus, to demonstrate irreparable harm,

³ Salsgiver Decl. at 4, para. 11. The participants in the joint ride-out observed Salsgiver’s crews in the process of attaching to the Penelec poles that were the subject of the ride-out. Penelec directed the crews to stop. *Id.* at 4, para. 11; February 11 Letter at 1.

⁴ Salsgiver Decl. at 5, para. 16.

⁵ Petition, Exhibit 1 (Letter from Eric J. Dickson, FirstEnergy, to Loren Salsgiver, Salsgiver Telecom (dated Feb. 11, 2014) (February 11 Letter)); Salsgiver Decl. at 4, para. 12. Salsgiver alleges that its “dealings” with Penelec personnel “have proceeded on the principle that if make-ready is not necessary to provide room for Salsgiver’s proposed attachment, then Salsgiver is free to attach.” *Id.* at 6, para. 17. However, as a result of the joint-ride out and subsequent correspondence with Penelec, Salsgiver was well aware that Penelec required make-ready before Salsgiver could attach.

⁶ *In the Matter of Adoption of Rules for the Regulation of Cable Television Pole Attachments*, First Report and Order, 68 F.C.C.2d 1585, 1587, para. 8 (1978) (*Cable Television Pole Attachments*). *See id.* at 1587, para. 7 (noting that Congress intended to grant the Commission “power to protect cable television operators from irreparable injury pending resolution of facially supportable complaints”).

⁷ 47 C.F.R. § 1.1403(d).

⁸ *Cable Television Pole Attachments*, 68 F.C.C.2d at 1588, para. 8. Salsgiver attempts to challenge the lawfulness of the removal provision in the parties’ pole attachment agreement, and also whether Penelec’s notice complied with the agreement. Petition at 7-10. However, the Commission’s rules state only that a utility must give “no less than 60 days *written notice*” prior to removing attachments, which Penelec gave. 47 C.F.R. § 1.1403(c).

⁹ 47 C.F.R. § 1.1403(d). According to Penelec, Salsgiver also has not demonstrated that cable or telecommunications services are being provided over its attachments, which is a prerequisite to there being a likely cessation of such services. Answer to Petition for Temporary Stay, File No. EB-14-MD-005 (filed Mar. 12, 2014) (Answer) at 10-11. Because we find that Salsgiver has not made a showing of irreparable harm, we need not address the cessation of services issue.

¹⁰ *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Order, 26 FCC Rcd 7792, 7794, para. 6 (WCB 2011) (*Broadband Order*) (citing *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (*Wisconsin Gas*)).

Salsgiver must provide “proof indicating that the harm is certain to occur in the near future.”¹¹ Economic loss “does not, in and of itself, constitute irreparable harm.”¹² A purely monetary injury resulting from the alleged wrongdoing is not “irreparable” if “adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation.”¹³

Salsgiver claims that Penelec’s proposed make-ready charges (1) failed to provide sufficient detail,¹⁴ and (2) would have required Salsgiver to “correct existing violations of previous attachers.”¹⁵ Yet Salsgiver had the option of first paying Penelec’s make-ready charges, under protest; filing a complaint with the Commission alleging that the charges violate section 224 of the Act;¹⁶ and, if successful, recovering those overcharges.¹⁷ Such a course would have obviated any alleged harm, and Salsgiver offers no explanation of why it could not have proceeded this way. Rather, Salsgiver, by its own admission, attached in violation of various communications and electrical standards.¹⁸ We cannot condone Salsgiver’s decision simply to disregard Penelec’s application/make-ready process.

In sum, the only harm facing Salsgiver was economic harm, which Salsgiver could have addressed in a complaint proceeding.

Conclusion

This letter ruling is issued pursuant to sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. §§ 154(i), 154(j), 224, section 1.1403 of the Commission’s rules, 47 C.F.R. § 1.1403, and the authority delegated in sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION



Lisa B. Griffin
Deputy Chief, Market Disputes Resolution Division
Enforcement Bureau

¹¹ *Id.*

¹² See *Broadband Order*, 26 FCC Rcd at 7794, para. 6 (citing *Wisconsin Gas*, 758 F.2d at 674); see also *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (“[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough”).

¹³ *Broadband Order*, 26 FCC Rcd at 7794, para. 6 (citing *Sampson v. Murray*, 415 U.S. 61, 90 (1974)).

¹⁴ Salsgiver Decl. at 5, para. 16.

¹⁵ Salsgiver Decl. at 6, para. 17.

¹⁶ 47 U.S.C. § 224.

¹⁷ See *Fiber Technologies Networks, L.L.C. v. Duquesne Light Co.*, Order, 18 FCC Rcd 10628, 10632, para. 12 (EB 2003).

¹⁸ See Salsgiver Decl. at 9, para. 23 (describing “a few cases” where Salsgiver attached less than 10 inches from other communications attachers and admitting that corrections to the attachments will be required); *id.* at 10, para. 25 (describing nine poles where Salsgiver’s attachments “should be adjusted”); *id.* at 10, para. 26 (describing one pole where Salsgiver, and other communications attachers, are “in electric violation”).

ATTACHMENT M

Zito Media, L.P.
102 South Main Street
Coudersport, PA 16915

November 19, 2015

John Forbes
Penelec
1600 W. First Street
Oil City, PA 16301

Re: Failure to Comply with the Federal Communications Commission
(the "FCC") Deadlines for Survey and Make-Ready Work under the 2011
FCC Pole Attachment Order and related orders and regulations (the "FCC
Pole Attachment Order") with respect to Application/ Work Request
Nos.57160811, 57675883, 57272347, 20141216, 57616552, 332744204,
20150119, 57315224, 57422933, 57344183, 57344467, 57344483,
57344523, 57485667, 57519173, 2015622.1, 20150622.2, 20150622.3,
57532690, 57525086, 20150701.1, 20150701.2, 20150701.3, 20150701.4,
20150706.1, 20150706.2, 20150708.1, 20150708.2, 20150708.3,
20150708.4, 20150717, 20150717.2, 20150722, 20150723.1, 20150723.2,
20150723.3, 20150723.4, 20150723.5, 20150723.6, 20150723.7,
20150728.1, 20150728.2, 20150728.3, 20150728.4, 20150728.5,
20150728.6, 20150728.7, 20150803, 20150803.1, 20150807.1, 20150812,
20150813, 20150821, 20150902, 20150805

Dear John:

Despite numerous calls and email exchanges to Robert Chumrik and various Penelec engineers from Todd McManus, Larry Deneff and Kelly Ragosta of Zito Media, L.P. notifying Penelec that it was failing to meet the required deadlines under the FCC Pole Attachment Order for the above-referenced pole applications submitted to Penelec, Penelec still has (i) not

provided to us a list of approved surveyors, engineering firms and contractors, (ii) not provided to us invoices of the estimated the make-ready costs for a number of applications we have submitted and (iii) not commenced the applicable make-ready work.

This clear lack of compliance with the FCC Pole Attachment Order will now require us to take the remedies allowed under the Order, including without limitation, filing a complaint with the FCC and the self-help remedy of hiring surveyors, engineering firms and contractors to complete the survey and make-ready work. To be clear, once we hire a surveyor, engineering firm and contractor for the survey and make-ready work, we will not be responsible for payment of any of these costs that you may have incurred or will incur with respect to the above-referenced pole applications.

In a final good faith effort to allow you to comply with the FCC Pole Attachment Order, we will not hire a surveyor, engineering firm and contractor until December 8, 2015 if you: (a) provide to us (i) your list of approved surveyors, engineering firms and contractors and (ii) the delinquent invoices of your estimated make-ready costs by the close of business on November 30, 2015 and (b) commence the applicable make-ready work by the close of business on December 7, 2015.

If you fail to provide to us your list of approved surveyors, engineering firms and contractors, you are on notice that we may be using any of the following surveyors, design firms and contractors or other firms that have been approved by other Pennsylvania utilities:

- Surveyors- Stine Consulting
- Design Firms- Henkels & McCoy, Inc. and Osmose
- Contractors- Aldridge Electric, Groves Electrical Contractors, Harlan Electric, Henkels & McCoy, Inc., IB Abel, Matrix, Michels Power, Miller Bros. and MJ Electric

Very truly yours,



Colin Higgin
Vice President and General Counsel
Zito Media, L.P.
(814) 260-9588